

1/26/85

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,
a Wisconsin corporation,
SLYMAN INDUSTRIES, INC., a
Delaware corporation, and
THERESA A. SLYMAN, an
individual resident of Ohio,

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,
INC., a Delaware corporation,

Defendant.

No. 93-C-0325

Judge Reynolds

AMENDED COMPLAINT

The plaintiffs, Milwaukee Die Casting Co., Slyman Industries, Inc. and Theresa A. Slyman, by their attorneys, for their Amended Complaint against the defendant, state as follows:

Introduction

1. In this action, the plaintiffs seek relief from the acts of the former owner and operator of the plaintiff Milwaukee Die Casting Co. The former owner released hazardous substances -- in particular, polychlorinated biphenyls ("PCBs") -- into the environment on the property on which the company is located in Milwaukee, Wisconsin. However, the former owner has failed and refused, and has attempted to evade its duty, to remedy the release.

2. The plaintiffs seek recovery of the costs of responding to the release, including response costs which they have already incurred, additional costs to be incurred in the ongoing remediation, all costs of litigation, including attorneys' fees and interest as provided by statute. The plaintiffs also seek a declaratory judgment that the defendant is liable for all allowable

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CERTIFICATE OF SERVICE

The undersigned states on oath, that she caused a copy of the below named pleading to be served upon the attorneys named on the attached Service List at their respective addresses as indicated on February 3, 1995.

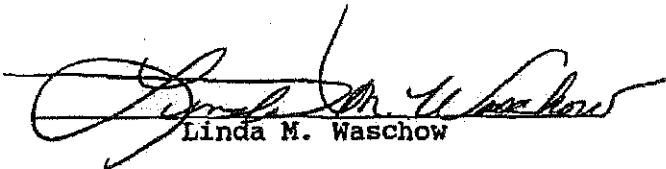
**PLAINTIFFS' RESPONSE TO MOTION FOR PARTIAL SUMMARY
JUDGMENT ON COUNTS II, IV, V AND VI OF ORIGINAL COMPLAINT**

By Mail:

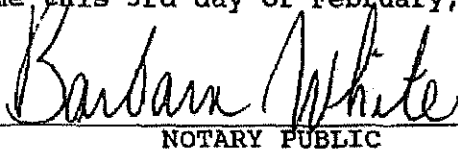
Michael Ash
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780 North Water Street
Milwaukee, Wisconsin 53202

By Messenger:

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Chicago, Illinois 60601


Linda M. Waschow

SUBSCRIBED and SWORN to before
me this 3rd day of February, 1995.



NOTARY PUBLIC



SERVICE LIST

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**MILWAUKEE DIE
CASTING CO. et al.**

Plaintiffs,

V.

No. 93-C-0325

**FISHER CONTROLS
INTERNATIONAL, INC.**

Defendants.

To: See Attached Service List

PLEASE TAKE NOTICE that on February 6, 1995, we will file with the Clerk of the United States District Court, Eastern District of Wisconsin, Historic Federal Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4583, **PLAINTIFFS' RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS III, IV, V AND VI OF ORIGINAL COMPLAINT**, a copy of each is attached hereto and hereby served upon you.

**MILWAUKEE DIE CASTING CO.,
SLYMAN INDUSTRIES, INC. and
THERESA A. SLYMAN**

By: James R. Van
One of Their Attorneys

**JAMES R. FIGLIULO
CARL A. GIGANTE
CARMEN D. CARUSO
FORAN & SCHULTZ
30 North LaSalle Street
Suite 3000
Chicago, Illinois 60602
312/368-8330**

FEB 9 1965

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1 set forth the remedy under the contract for the
2 purchaser with respect to PCBs?

3 MR. RUNNING: Objection to the form
4 of the question.

5 A. Are you asking me a legal
6 conclusion? I'm not sure.

7 Q. I was trying to establish your
8 understanding at the time in 1982 when the
9 contract was executed.

10 A. My understanding of the relationship
11 between the parties as the lawyer for the company
12 was that we had rights which were given under
13 this contract and any other rights that might
14 exist under the law, if any.

15 Q. Were any of the meetings that you
16 attended for the negotiation of this contract
17 held in Ohio?

18 A. With my client, yes. And there were
19 telephone conversations. At the actual meetings
20 no representative of Fisher Controls came to Ohio
21 to meet with me that I recall.

22 MR. CARUSO: No further questions.

23 MR. RUNNING: Thank you.

24 (Deposition concluded at 5:25 p.m.)

25

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,

SLYMAN INDUSTRIES, INC. .

and THERESA A. SLYMAN,

Plaintiffs,

vs.

Case No.

FISHER CONTROLS

93 C 0325

INTERNATIONAL, INC.,

Defendant.

Deposition of ROBERT E. GLASER, a
Witness called by the Defendant for examination
under the Applicable Rules of Federal Civil
Procedure, taken before me, Steven H. Henschel, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, pursuant to
notice and stipulations of counsel, at the
offices of Arter & Hadden, 1100 Huntington
Building, Cleveland, Ohio, on Wednesday, November
9, 1994, at 10:00 o'clock a.m.



CE FARATTI-RENNILLO

CLEVELAND (216) 687-1161

AKRON (216) 253-8119

1 A. Okay.

2 MR. CARUSO: Counsel, what I'm driving at, and perhaps
3 we could just enter this stipulation, is that Fisher acquired
4 the assets and certain obligations of the old Milwaukee Die
5 Casting Company in exchange for Monsanto stock, and, then in a
6 second transaction or a second step of the same transaction,
7 however you want to describe it, Fisher then transferred all of
8 the assets of the business to the new Milwaukee Die Casting
9 Company which Fisher had incorporated in Delaware.

10 MR. RUNNING: Those were parts of the same
11 transaction, but, yes, there's no dispute about that. And the
12 transfer took place on the same day.

13 MR. CARUSO: But just so we're clear, Fisher did not
14 simply acquire the stock of the old Milwaukee Die; it acquired
15 the assets and the obligations and transferred them to the new
16 company which it created.

17 MR. RUNNING: As is contained in the acquisition
18 agreement, it acquired certain assets and certain obligations.

19 Q. In connection with the Fisher acquisition of Milwaukee
20 Die Casting as we've stated it on the record, did you
21 participate in any discussions, whether internally at Fisher or
22 Monsanto or with the Schraders or their representatives,
23 concerning environmental matters?

24 A. None that I recall.

25 Q. As the designated president of the new Milwaukee Die

1 short, I mean, we'll stipulate to the authenticity of the
2 Milwaukee Die Casting board minutes and incorporation statements
3 for the Delaware corporation, assuming you don't have an
4 objection.

5 MR. CARUSO: No, I don't. So you'd be willing to
6 stipulate, then, to the incorporation of the new Milwaukee Die
7 Casting?

8 MR. RUNNING: And that it occurred in December of 1974
9 and the statements in Exhibit 227 are accurate.

10 MR. CARUSO: Okay.

11 Q. Did there come a time after the transaction between
12 Fisher and the old Milwaukee Die, that is the Schrader family in
13 Milwaukee, Wisconsin, that Fisher transferred all of the
14 business and assets of Milwaukee Die Casting Company to the new
15 company, the new Milwaukee Die Casting Company which Fisher had
16 incorporated in Delaware?

17 A. You're asking me if that was done?

18 Q. Yes.

19 A. Again, I cannot recall specifically.

20 Q. Okay. Let me direct you to Exhibit, what I've marked
21 as 229 which is Bates stamped MDC 897.

22 MR. CARUSO: Perhaps it's another document that
23 counsel could stipulate to the document and the facts
24 represented in the document, the transaction represented?

25 MR. RUNNING: Yes, we'll do that.

1 president of the new Milwaukee Die Casting Company, Incorporated
2 in Delaware?

3 A. I was aware of that appointment. I could not have
4 stated the date.

5 Q. Let me show you Exhibit 227, which is Bates stamp
6 numbers MDC 892 through 894 and see if it refreshes your
7 recollection about any of this.

8 A. I observe the documents and the signatures and the
9 names, all of which are familiar and known to me other than
10 Mr. -- the name Ehlers. I don't recognize the placement of that
11 gentleman. He's listed as assistant secretary there.

12 Q. Does that document refresh your recollection as to
13 your appointment as president of the new Milwaukee Die Casting
14 Company?

15 A. Well, only that this document so decrees. I can't say
16 that--

17 MR. RUNNING: I don't think the witness ever had any
18 problem with anything other than the date, which he said he
19 didn't remember.

20 MR. CARUSO: Well, what I guess I'm asking is whether
21 it refreshes his recollection that it occurred in 1974.

22 A. Well, only to the degree that I can read the date on
23 the letter.

24 Q. All right.

25 MR. RUNNING: well, Carmen, maybe to cut some of this

1 A. I don't recall the document, no.

2 Q. Are you aware that, in the acquisition, Fisher agreed
3 to acquire the assets and certain obligations of the old
4 Milwaukee Die Casting Company, and I'm using that term to
5 describe Milwaukee Die Casting as it was owned by the Schrader
6 family, in exchange for Monsanto stock which was delivered to
7 Milwaukee, the old Milwaukee Die Casting Company?

8 MR. RUNNING: Well, I object to the reference to it
9 being delivered to the old Milwaukee Die Casting Company. I
10 think that's contrary to the facts. I think what you meant to
11 say was delivered to the shareholders of the Milwaukee Die
12 Casting Company, the Wisconsin Corporation.

13 MR. CARUSO: I think it was delivered to the company
14 and then distributed to the shareholders, but subject to your
15 objection?

16 A. Again, that long ago, I do not recall the details of
17 the transaction or how it was arranged. I presume-- I'm
18 certain that I would have known them at that time, but that was
19 a long time ago.

20 Q. Sure. Are you aware that, in apparent anticipation of
21 the acquisition of Milwaukee Die Casting Company, the Wisconsin
22 Corporation, that Fisher arranged for the incorporation of a new
23 Milwaukee Die Casting Company in the State of Delaware?

24 A. I do not recall that.

25 Q. And are you aware that, in 1974, you became the

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING
CO., et al.,

Plaintiffs,

vs.

FISHER CONTROLS
INTERNATIONAL, INC.,

Defendant.

No. 93-C-0325

DEPOSITION OF JAMES H. BOYD

taken before Mary E. Button, Certified Shorthand Reporter, at
the offices of Fisher Controls, 205 South Center Street,
Marshalltown, Iowa 50158; commencing at or about 12:30 p.m.,
January 4, 1995.

A P P E A R A N C E S

For the Plaintiffs

CARMEN D. CARUSO
Foran & Schultz
30 North LaSalle Street, Suite 3000
Chicago, IL 60602

For the Defendant

ANDREW R. RUNNING
Kirkland & Ellis
200 East Randolph Drive
Chicago, IL 60601

Also Present: Greg Slyman

Original



JAMES R. FIGLIULO
CARL A. GIGANTE
CARMEN D. CARUSO
FORAN & SCHULTZ
30 North LaSalle Street
Suite 3000
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Plaintiffs further dispute the legal conclusion in paragraph 6 relating to the effect of certain language contained in paragraph 14 of the February 23, 1982 "Purchase Agreement - Common Shares" as executed by Fisher (seller) and plaintiff Slyman Industries, Inc. (buyer). According to Fisher: "Fisher's future liability, if any, to the buyer for the PCBs at the MDCC facility was defined in §14 of that agreement." Plaintiffs dispute that legal conclusion, for §14 of the 1982 agreement merely set forth the contractual remedies of Slyman Industries, Inc. related to PCBs and did not purport to limit the plaintiffs' rights under CERCLA or any other law. As Robert Glaser, the attorney for Slyman Industries, Inc. in the 1982 transaction, testified at his deposition:

Q: I was trying to establish your understanding at the time in 1982 when the contract was executed.

A: My understanding of the relationship between the parties as the lawyer for [Slyman Industries, Inc.] was that we had rights which were given under this contract and any other rights that might exist under law, if any.

(Deposition of Robert E. Glaser, 11/9/94, p. 208, copy attached hereto as Exhibit B).

Plaintiffs make no further response to the instant Motion, but respectfully request that any findings which the Court may make on this motion be limited to counts III, IV, V and VI of the original complaint.

DATED this 31 day of February, 1995.

MILWAUKEE DIE CASTING CO., SLYMAN INDUSTRIES, INC. and THERESA A. SLYMAN

By: 
One of Their Attorneys

However, plaintiffs do dispute certain factual assertions and legal conclusions in defendant's alleged "Statement of Undisputed Fact" which are not relevant to the alleged statute of limitations defense -- but which may be relevant to the CERCLA claims in counts I, II and III of the Amended Complaint (which are not subject to the instant motion). For example, in paragraph 1, Fisher asserts that "Fisher acquired the common stock of 'MDCC' on January 13, 1975." This statement is deceptive. In fact, the following transaction(s) occurred with respect to Fisher's acquisition of "MDCC":

- (1) The "old" Milwaukee Die Casting Corporation which Fisher defines as "MDCC" in its motion was a Wisconsin corporation (hereinafter "MDCC 1").
- (2) In 1974, Fisher learned that MDCC 1 was for sale and negotiated to purchase that company.
- (3) In December 1974, in anticipation of its acquisition of MDCC 1, Fisher caused the incorporation of a "new" Milwaukee Die Casting Company in the State of Delaware (hereinafter "MDCC 2").
- (4) On or about January 13, 1975, Fisher entered into an agreement to acquire certain assets and certain liabilities of MDCC 1, in exchange for stock in Monsanto Corporation, which was then the parent company of Fisher.
- (5) In a second transaction on or about January 13, 1975, Fisher transferred its newly acquired assets and liabilities of MDCC 1 to MDCC 2, in exchange for stock in MDCC 2.

(See Deposition of James H. Boyd, 1/4/95, pp. 27-30, including a stipulation between counsel as to these facts as set forth at p. 30, lines 2-16, copies attached hereto as Exhibit A).

2/3/95

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING CO.,
SLYMAN INDUSTRIES, INC. and
THERESA A. SLYMAN

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,
INC.,

Defendants.

No. 93-C-0325

**PLAINTIFFS' RESPONSE TO MOTION FOR PARTIAL SUMMARY JUDGMENT
ON COUNTS III, IV, V AND VI OF ORIGINAL COMPLAINT**

In response to defendant Fisher Controls International, Inc.'s Motion For Partial Summary Judgment on counts III, IV, V and VI of the original complaint ("Motion"), Plaintiffs, Milwaukee Die Casting Co., Slyman Industries, Inc. and Theresa A. Slyman ("plaintiffs"), respectfully request that the record reflect the plaintiffs' objection to the denial of their request for the voluntary dismissal of those counts without prejudice (as contained in plaintiffs' Motion For Leave To Amend Their Complaint, as filed on or about December 2, 1994). Based upon their belief that those counts should be voluntarily dismissed without prejudice, plaintiffs respectfully oppose the instant Motion. Accordingly, plaintiffs do not respond to Fisher's factual assertions and legal conclusions with respect to its attempt to establish a statute of limitations defense to the state law claims in original counts III, IV, V and VI — although plaintiffs' failure to cite evidence or legal authority relative to the statute of limitations issue is not intended to indicate any lack of evidence or legal support of the claims which are subject to the Motion.

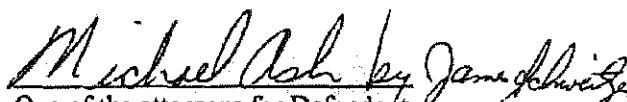


3. A declaration, in the event that Fisher is found to be a liable party under CERCLA § 107 or § 113, that Fisher is entitled to contribution from plaintiffs under CERCLA, and an Order requiring an equitable allocation of response costs among and between plaintiffs, Fisher, and any other liable party;

4. An Order granting Fisher its attorneys' fee and costs; and

5. An Order granting Fisher all other proper relief as the Court deems just and equitable.

Dated: February 6, 1995


One of the attorneys for Defendant
Fisher Controls International, Inc.

Michael Ash
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(414) 273-3500

Andrew R. Running
Robert B. Ellis
KIRKLAND & ELLIS
200 East Randolph Drive
Chicago, Illinois 60601
(312) 861-2000

(Inquiries May Be Directed To Mr. Ash.)

FIRST COUNTERCLAIM

6. Fisher realleges and incorporates by reference paragraphs 1 through 5 of its Counterclaims.

7. In the event, and as plaintiffs allege, that (1) the operations at MDCC's Milwaukee plant resulted in disposal or constituted treatment of hazardous substances at a facility within the meaning of CERCLA; (2) MDCC's Milwaukee plant is a facility under CERCLA; (3) a release or threatened release of hazardous substances from the plant has occurred under CERCLA; and (4) such release or threatened release has caused the incurrence of response costs consistent with the National Contingency Plan, then Fisher is informed and believes that plaintiffs are liable parties under section 107 of CERCLA, 42 U.S.C. § 9607, as current owners of the plant or as owners of the plant at the time of disposal of a hazardous substance

8. In the event, and as plaintiffs allege, that there have been releases of hazardous substances at MDCC's Milwaukee plant, that necessary response costs have been incurred consistent with the National Contingency Plan, and that Fisher is a liable party under CERCLA § 107, 42 U.S.C. § 9607 or § 113, 42 U.S.C. § 9613, then Fisher is informed and believes that plaintiffs are liable to Fisher pursuant to CERCLA § 113, 42 U.S.C. § 9613, for contribution to Fisher for any amount in excess of Fisher's equitable share of response costs

WHEREFORE, Fisher prays for the following relief:

1. A declaration that plaintiffs are liable parties under CERCLA;
2. A declaration that Fisher is entitled to recover any response costs it has incurred and may incur in the future at MDCC's Milwaukee plant from plaintiffs under the provisions of CERCLA,

WHEREFORE, Fisher prays that plaintiffs' complaint be dismissed with prejudice; that plaintiffs take nothing; and that Fisher be awarded its costs of defense and such further relief as the Court deems appropriate.

COUNTERCLAIMS

1. Plaintiffs filed this action on April 1, 1993, and served it on August 2, 1993, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and the common law alleging that Fisher and Monsanto Company ("Monsanto") are liable for alleged cleanup costs associated with MDCC's die casting plant in Milwaukee. Plaintiffs filed their amended Count I through III on January 26, 1995.

2. Plaintiffs' complaint alleges that Fisher contaminated MCDD's Milwaukee plant with hazardous substances, including polychlorinated biphenyls ("PCBs"), and knowingly sold the contaminated property without disclosing the extent of contamination.

3. If, as plaintiffs allege, there have been releases of hazardous substances from MDCC's Milwaukee plant, then upon information and belief the releases occurred during the period that one or more of the plaintiffs owned or operated the plant or during the period that a third party owned or operated the plant.

4. By these Counterclaims, Fisher seeks damages and/or contribution from plaintiffs, as well as a judicial determination of the respective responsibilities and liabilities of Fisher and of plaintiffs under CERCLA in connection with MDCC's Milwaukee plant.

5. This Court has jurisdiction over these Counterclaims pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1331.

2. Fisher is informed and believes, and upon that basis alleges, that plaintiffs did not exercise ordinary care, caution and prudence in operating the MDCC facility. Fisher is further informed and believes, and upon that basis alleges, that plaintiffs did not exercise ordinary care, caution and prudence to remediate alleged contamination at the MDCC facility and has acted in such a manner so as to cause or contribute to the further contamination of such property. As a consequence, plaintiffs by their conduct, negligent acts, and omissions, contributed to and proximately caused the injuries of which they complain. As such, plaintiffs' claims are barred by the contributory and comparative negligence of plaintiffs.

3. Fisher is informed and believes, and on that basis alleges, that the alleged damage claimed by plaintiffs was caused solely by the acts or omissions of third parties who were not employees or agents of Fisher, and with which Fisher had no direct or indirect relationship. Fisher exercised due care with respect to any hazardous substances at the MDCC facility, and took reasonable precautions against foreseeable acts or omissions of any such third parties and the consequences that could foreseeably result therefrom. Fisher, therefore, is not liable for conditions at the MDCC facility pursuant to CERCLA § 107(b)(3), 42 U.S.C. § 9607(b)(3).

4. Any damages or injuries alleged in plaintiffs' complaint were caused solely by a combination of the acts or omissions of third parties and acts of God for which Fisher is not responsible pursuant to the provisions of CERCLA § 107(b)(4), 42 U.S.C. § 9607(b)(4).

5. Plaintiffs' claims are barred, in whole or in part, by the contracts between Fisher and plaintiffs which disclaim all liability for the damages claimed by plaintiffs. Such disclaimers include, but are not limited to, Section B(1) of the Purchase Agreement, dated February 23, 1982, which stated: "The premises shall be sold and accepted on an "AS IS, WHERE IS" basis as of the closing."

29. Under principles of common law and equity, Fisher should be held liable to the plaintiffs for all or part of the response costs and damages incurred by the plaintiffs as a result of the disposal of PCBs on the premises of MDCC and the Property prior to the sale of the MDCC shares to SI and the Property to Slyman.

ANSWER: Fisher denies the allegation of paragraph 29.

WHEREFORE, Fisher prays that plaintiffs' complaint be dismissed with prejudice; that plaintiffs take nothing; and that Fisher be awarded its costs of defense and such further relief as the Court deems appropriate.

**THIRD CLAIM FOR RELIEF
(Declaratory Judgment)**

30. The plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 29.

ANSWER: Fisher realleges and incorporates by reference its answers to the allegations contained in paragraphs 1 through 29

31. As a result of Fisher's release of PCBs into the premises and on the Property, there exists an actual and present controversy between the plaintiffs and Fisher within the jurisdiction of this Court, as to the liability and responsibility of Fisher for future costs of remediation and clean-up of the premises and the Property, which controversy may be determined by a judgment of this Court.

ANSWER: Fisher denies the allegations of paragraph 31.

WHEREFORE, Fisher prays that plaintiffs' complaint be dismissed with prejudice; that plaintiffs take nothing; and that Fisher be awarded its costs of defense and such further relief as the Court deems appropriate

DEFENSES

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

AFFIRMATIVE DEFENSES

1. Plaintiffs failed to take reasonable steps available to mitigate the damages alleged to have been suffered, and are therefore barred from any recovery against Fisher.

necessarily incurred in order to respond to the release of PCBs from the facility, and are recoverable under 42 U.S.C. § 9607(a).

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23.

24. The response actions taken by the plaintiffs, and the costs incurred thereby, are and were consistent with the national contingency plan, addressing responses to releases of hazardous substances, pursuant to 42 U.S.C. §§ 9601(23) and 9607(a) and 40 C.F.R. § 300.71(a)(2)(ii).

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24.

25. Fisher is liable for the costs of response incurred by the plaintiffs to date.

ANSWER: Fisher denies the allegations of Paragraph 25.

26. Pursuant to 42 U.S.C. § 9607(a). Fisher is liable for the interest on the response costs recoverable by the plaintiffs

ANSWER: Fisher denies the allegations of Paragraph 26.

WHEREFORE, Fisher prays that plaintiffs' complaint be dismissed with prejudice; that plaintiffs take nothing; and that Fisher be awarded its costs of defense and such further relief as the Court deems appropriate

SECOND CLAIM FOR RELIEF (Contribution)

27. The plaintiffs reallege and incorporate here by reference the allegations contained in paragraphs 1 through 26.

ANSWER: Fisher realleges and incorporates here by reference its answers to the allegations contained in paragraphs 1 through 26.

28. As a person liable under 42 U.S.C. § 9607(a), Fisher is liable to the plaintiffs under 42 U.S.C. § 9613(f) for the response costs incurred by the plaintiffs.

ANSWER: Fisher denies the allegation of paragraph 28.

disposal may exceed \$1,500,000.00, and may cause substantial interruption to MDCC's business. However, as of the date of this amended complaint, the actual costs of remediation and cleanup are not determined.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 18.

FIRST CLAIM FOR RELIEF
(Relief Under the Comprehensive
Environmental Response, Compensation and Liability Act)

19. The plaintiffs reallege and incorporate here by reference the allegations contained in paragraphs 1 through 18.

ANSWER: Fisher realleges and incorporates here by reference its answers to the allegations contained in paragraphs 1 through 18.

20. The premises and equipment of MDCC and the Property, independently or collectively, constitute a "facility" within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(9).

ANSWER: Fisher denies the allegations of paragraph 20.

21. Fisher was an "owner" and/or "operator" of the facility within the meaning of 42 U.S.C. §§ 9601(20)(A) and 9607(a) at the time hazardous substances were disposed on the premises of MDCC and/or the Property. Upon information and belief, Fisher was exercising control over and actively participating in the activities of MDCC at the time PCBs were disposed on the premises of MDCC and the Property.

ANSWER: Fisher denies the allegation of paragraph 21.

22. There has been a release or releases, or a threatened release or releases, within the meaning of 42 U.S.C. § 9601(22) of hazardous substances on the premises of MDCC and the Property, in particular, PCBs.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22.

23. The release or releases, or threatened release or releases, of hazardous substances from the facility has caused the plaintiffs to incur costs of response, including but not limited to sampling, monitoring and exposure assessment costs; costs of experts to analyze the information gathered and develop removal and/or remedial responses; and costs of investigating and enforcing plaintiffs' CERCLA claim, including, but not limited to, attorney fees. These costs were

ANSWER: Fisher admits the allegations of Paragraph 12.

13. Upon information and belief, at the time Fisher owned and operated MDCC, employees of MDCC and agents of Fisher disposed or caused the disposal of hazardous substances, including without limitation PCBs, on MDCC's premises and on the Property, and released or caused the release of these substances into the environment. PCBs are a hazardous substance within the meaning of 42 U.S.C. § 9601(14) and 40 C.F.R. § 302.

ANSWER: Fisher admits that PCBs are a hazardous substance within the meaning of 42 U.S.C. § 9601(14) and 40 C.F.R. § 302. Fisher denies the remaining allegations of Paragraph 13.

14. As a result of Fisher's release of the PCBs on the premises and on the Property, and on information and belief, PCBs in hazardous concentrations are present on MDCC's premises and on the Property.

ANSWER: Fisher denies the allegations of Paragraph 14.

15. MDCC has not released or caused the release of PCBs onto MDCC's premises or the Property since the sale of the MDCC shares in 1982.

ANSWER: Fisher denies the allegations of Paragraph 15.

16. In September, 1991, MDCC's lender reported the results of an environmental audit of MDCC and the Property, and informed the plaintiffs that the MDCC premises and the Property were contaminated with PCBs. The report prepared by the lender's environmental consultant, together with the follow-up sampling, revealed PCB contamination on concrete and wooden floors, utility service tunnels, sewer trenches, soils and in other locations on the premises and the Property.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16.

17. In March, 1992, the plaintiffs engaged environmental consultants to conduct a Phase II audit of the condition of the property. To date, the plaintiffs have incurred costs and fees in excess of \$100,000 in attempting to learn the true condition of the PCB contamination of MDCC's premises and of the Property and in attempting to mitigate the effects of the discovery of the contamination.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. On further information and belief, the costs of decontaminating MDCC's premises and the Property, including documentation, labor, equipment, materials, transportation and

10. At all times while Fisher was the owner and operator of MDCC, MDCC had its principal place of business on two parcels of real property in Milwaukee County located on North Holton and West Hubbard Streets, Milwaukee, WI 53211, more particularly described as:

That part of Government Lot 4 in the SW $\frac{1}{4}$ Fractional Section 4, T 7 N, R 22 E, in the city of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW $\frac{1}{4}$; thence East on a line which is 855.00 ft. North of and parallel with the South line of said $\frac{1}{4}$ Section 380.50 ft, to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North Line of said Lot 4; thence West on said North line 380.50 ft, to a point 660.00 ft. East of the West line of said SW $\frac{1}{4}$; thence South on a line 465.00 to the point of beginning, excepting the West 33.00 ft, for street purposes.

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One Quarter ($\frac{1}{4}$) of Section numbered Five (5) and the Northwest One Quarter ($\frac{1}{4}$) of Section numbered Four (4) in Township numbered Seven (7) North of Range numbered Twenty-two (22) East, in the City of Glendale.

(collectively referred to herein as "the Property").

ANSWER: Fisher admits that it was the legal owner of the Property from December 22, 1981 until February 23, 1982. Fisher denies the remaining allegations of Paragraph 10.

11. Prior to February 23, 1982, Fisher became the legal and beneficial owner of the Property.

ANSWER: Fisher admits that it was the legal owner of the Property from December 22, 1981 until February 23, 1982. Fisher denies the remaining allegations of Paragraph 11.

12. On February 23, 1982, Fisher sold the Property to Theresa Slyman pursuant to a Purchase Agreement dated February 23, 1982.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4.

5. The plaintiff Theresa A. Slyman ("Slyman") is an individual citizen of the State of Ohio and resides at [REDACTED]

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5.

6. The defendant Fisher Controls International, Inc. ("Fisher") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 8000 Maryland Avenue, P.O. Box 14755, St. Louis, MO 63178. Fisher is engaged in the business of manufacturing regulators and control valves.

ANSWER: Fisher is engaged in the business of manufacturing process control equipment, which includes industrial valves and regulators, electronic process instrumentation and other products, and service and repair operations. Fisher admits the remainder of the allegations of Paragraph 6.

Jurisdiction and venue

7. This Court has jurisdiction of the subject matter of this action pursuant to 42 U.S.C. §§ 9607(a) and 9613(b), 28 U.S.C. § 1331 and principles of pendent jurisdiction. Declaratory relief is available pursuant to 28 U.S.C. § 2201. Venue is proper in this Court under 28 U.S.C. § 1391 and 42 U.S.C. § 9613(b). These claims arose in this district.

ANSWER: Fisher admits the allegations of Paragraph 7

Factual Allegations Common to All Claims

8. From approximately 1975 until February 23, 1982, Fisher was the sole owner of the common shares of MDCC. During that time period, Fisher owned and operated MDCC.

ANSWER: Fisher admits that from approximately 1975 until February 23, 1982, it owned all common shares of Milwaukee Die Casting Company ("MDCC"). Fisher denies the remaining allegations of Paragraph 8.

9. On February 23, 1982, Fisher sold all of the common shares of MDCC to SI pursuant to a Purchase Agreement - Common Shares dated February 23, 1982.

ANSWER: Fisher admits the allegations of Paragraph 9.

"Amended Complaint," Fisher does not intend to supersede or replace its answer to plaintiffs' original Count III. By order of the Court, that claim and Fisher's answer are to stand.

Introduction

1. In this action, the plaintiffs seek relief from the acts of the former owner and operator of the plaintiff Milwaukee Die Casting Co. The former owner released hazardous substances -- in particular, polychlorinated biphenyls ("PCBs") -- into the environment on the property on which the company is located in Milwaukee, Wisconsin. However, the former owner has failed and refused, and has attempted to evade its duty, to remedy the release.

ANSWER: Fisher admits that plaintiffs seek relief from Fisher, but denies that plaintiffs are entitled to any such relief. Fisher denies the remaining allegations of Paragraph 1.

2. The plaintiffs seek recovery of the costs of responding to the release, including response costs which they have already incurred, additional costs to be incurred in the ongoing remediation, all costs of litigation, including attorneys' fees and interest as provided by statute. The plaintiffs also seek a declaratory judgment that the defendant is liable for all allowable response costs to be incurred in the future to remediate the hazard.

ANSWER: Fisher admits that plaintiffs seek recovery of alleged response costs and a declaratory judgment for future response costs, but denies that plaintiffs are entitled to any such relief or declaratory judgment. Fisher denies the remaining allegations of Paragraph 2.

The Parties

3. The plaintiff Milwaukee Die Casting Company, Inc. ("MDCC") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 4132 North Holton Street, Milwaukee, WI 53211. MDCC is engaged in the business of die casting and trimming.

ANSWER: Fisher is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3.

4. The plaintiff Slyman Industries, Inc. ("SI") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at 800 West Liberty Street, Medina, OH 44256. SI is a holding company responsible for the management, among other companies, of MDCC.

U.S. DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
FILED

MILWAUKEE DIE CASTING CO.,
a Wisconsin corporation,
SLYMAN INDUSTRIES, INC., a
Delaware corporation, and
THERESA A. SLYMAN, an
individual resident of Ohio,

Plaintiffs,

v.

FISHER CONTROLS INTERNATIONAL,
Inc. a Delaware corporation,

Defendant.

95 FEB -6 P2:2

No.93-C-0325

Judge Reynolds

FISHER CONTROLS INTERNATIONAL, INC.'S
ANSWER TO PLAINTIFFS' AMENDED COUNTS I THROUGH III

Pursuant to Federal Rules of Civil Procedure 8 and 15, defendant Fisher Controls International, Inc. ("Fisher") answers plaintiffs' amended Counts I through III as follows:

Fisher answered plaintiffs' original Complaint on September 27, 1993, and filed an amended answer on December 1, 1993. Counts III through VI of plaintiffs' original Complaint contain state law claims for breach of contract, negligent misrepresentation, intentional misrepresentation and "strict liability" misrepresentation.

On January 26, 1995, the Court denied plaintiffs' motion for leave to dismiss the state law claims stated in Counts III through VI of plaintiffs' original complaint, but granted plaintiffs leave to amend their CERCLA claims. Plaintiffs' "Amended Complaint" contains three CERCLA counts, as allowed by the Court. However, plaintiffs' "Amended Complaint" does not restate the state law claims pled in plaintiffs' original Complaint, nor does it renumber the state law claims. As a result, the pleadings as they now stand contain two "Count III's." By answering Count III in plaintiffs'

2-10

65

FISHER CONTROLS COMPANY

MANUFACTURING DIVISION

May 3, 1974

J. H. BOYD
V.P. Manufacturing

Mr. Tom K. Smith
Managing Director
Hansons Commercial Products Company
870 North Lindberg
St. Louis, Missouri 63166

Subject: Additional Justification -
Milwaukee Die Casting Company Acquisition

Dear Tom:

A rather lengthy accompanying letter provides some additional information which aids in justifying the subject acquisition. Because that letter did grow to be long, I offer this brief summary by way of introduction.

1. Our failure to acquire Milwaukee Die has a high probability of resulting in a decreased service level and resultant intangible cost consequences.
2. Our failure to acquire Milwaukee Die has a probability of increasing our die casting costs by at least \$254,000.00 per year.
3. If our failure to acquire Milwaukee Die necessitated having dies to other vendors, start-up costs of between \$180,000.00 and \$640,000.00 are probable.
4. If our failure to acquire Milwaukee Die necessitated having dies to other vendors, technical problems in achieving acceptable castings are certain to result in substantial additional start-up costs.

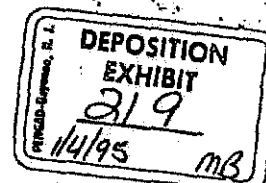
I believe acquisition of Milwaukee Die is very important for Fisher.

Yours sincerely,

FISHER CONTROLS COMPANY

James H. Boyd
Vice President, Manufacturing

JHB:jo
cc: Mr. T. N. Smith



HDC 004930

PX-219

James J. Green
Fisher Controls International Inc.
7711 Bonhomme
Clayton Mo. 63105

HDC 000467

Milwaukee Die Casting Company, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same.

Sandra Hale

Sandra Hale

Printed or Typewritten Name
Notary Public

My Commission expires

A.D., 19__

My Commission Expires Jan 15, 1983

This instrument was drafted by Dennis J. Green.

DEEL 1421 MAG 700

IN WITNESS WHEREOF, the said party of the first part hereunto
set its hand and seal the day and year first above written.

MILWAUKEE DIE CASTING COMPANY, INC.

By Larry W. Solley (Seal)
Larry W. Solley
President

Signed, sealed and delivered
in the presence of

Ken Goudy
Ken Goudy

Printed or Typewritten Name

Carolyn Beavers
Carolyn Beavers

Printed or Typewritten Name

ATTEST:

Dennis J. Green
Dennis J. Green
Secretary

STATE OF ARKANSAS)

) SS

UNION COUNTY)

Personally came before me, this 24th day of December,
A.D., 1981, the above named Larry W. Solley, President of

5518568

REGISTER'S OFFICE
Milwaukee County, Wis.
RECORDED AT 11:35 A.M.

DEC 30 1981 6:99 to
REEL 1421 IMAGE 701 incl
Dennis J. Green
REGISTER OF DEEDS

MDC 000465

SPECIAL WARRANTY DEED

This Indenture, made this 24th day of December, 1981, between Milwaukee Die Casting Company, Inc., a Delaware corporation, Grantor, party of the first part, and Fisher Controls Company, Inc., a Delaware corporation, Grantee, party of the second part, the parent of the Grantor.

Witnesseth, that the said party of the first part, by these presents does hereby convey and grant unto the said party of the second part and its assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One Quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale.

SEE
Pg 77.25
EXEMPT

SUBJECT TO zoning regulations, deed restrictions, easements and rights-of-way of record and to any state of facts, easements or matters which a correct survey or inspection of the premises would show.

And the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under it, but against none other and not otherwise.

(This conveyance is from a wholly-owned subsidiary to its parent corporation and is exempt from the Real Estate Conveyance Tax.)

INSTRUCTIONS

A complete return is required for all conveyances of passage of ownership interests in real estate except easements, wills or leases. Upon completion, submit all parts of this form intact to the Register of Deeds with the instrument of conveyance. If a fee is due make check payable to Register of Deeds.

GRANTOR: Usually the former owner of the property. (Seller if property transferred by sale.)

GRANTEE: The new owner of the property (the purchaser when property transferred by sale).

Indicate whether or not grantor and grantee are related by blood, marriage, lessee-lessor, co-owner, parent corporation or joint owner.

Enter the name and address to which tax bills are to be sent.

PART I - PROPERTY TRANSFERRED Enter the name of the county and the municipality in which the transferred property is located and check whether it is a city, village, or town. Enter the street address of the property transferred. In rural property, give the fire number if known.

The legal description is the legally accepted statement which identifies the location and boundaries of this property and can be found on the instrument of conveyance (deed, etc.). Enter the full legal description or attach three copies of the legal description as it appears on the instrument of conveyance to the front of this form. Also enter the town, range and section in which property is located. Enter the property parcel number opposite the space provided. The number can most readily be obtained from the property tax bill at the time taxes are ascertained for proration purposes.

PART II - PHYSICAL DESCRIPTION AND INTENDED USE OF PROPERTY.

Item 1a: Check all boxes that best describe property.

Item 1b: Check only one box. (If "Land Only" is checked in 1.a. omit this item.)

Item 1c: Check if property is to be rented.

Item 2: Check only one box which best describes intended use; if (f.) is checked please explain.

Item 3a: Enter lot size. If unknown, enter estimated size and check box.

Item 3b: Enter total acres. If unknown, enter estimated total acreage and check box.

Item 3b1: Enter number of tillable acres, if any.

Item 3b2: Enter number of acres under woodland tax contract, if none, enter "none".

Item 3b3: Enter number of acres under forest crop contract, if none, enter "none".

Item 3c: Enter number of feet of water frontage. If unknown, enter estimated footage and check box. If none, enter "none".

Note: Owners of forest crop land are required by law to notify the Department of Natural Resources of transfer of ownership.

PART III - TRANSFER Check the appropriate boxes (1 through 8) to show how the property was acquired, i.e., by Sale, Gift, or Exchange and what property interests were retained or transferred. If Other (5, 6 or 8) is checked, please explain in space provided. In (7) show the amount of mortgage assumed by the buyer.

PART IV - COMPUTATION OF FEE On Line 1 enter the full actual consideration paid or to be paid for Real Estate including the amount of any lien or liens thereon. DO NOT include consideration for personal property such as household furniture, farm machinery, boats, etc. In case of a Gift, nominal consideration or Exchange of property, enter the estimated current fair market value (the price which could ordinarily be obtained for the property at a sale in an open market between a willing buyer and willing seller).

If Line 1 does not end in even hundreds (i.e. \$11,520), round to next even hundred (i.e., \$11,600).

On Line 2 show the value of personal property purchased but excluded from Line 1.

On Line 3 show the value of real estate included in Line 1 but exempt from property tax.

On Line 4 enter Transfer Exemption Number (1-13) if this transfer is exempt. See Exemptions Below. Also, if this is an original land contract (no fee is imposed) enter the words "Original L.C." on this line.

On Line 5 enter the amount of fee if none of the exemptions apply to the transfer. The fee is based upon a rate of 30¢ per \$100 on Line 1.

SECTION 77.25 - EXEMPTIONS FROM FEE

The fees imposed by this subchapter do not apply to a conveyance:

- (1) Prior to the effective date of this subchapter (October 1, 1969).
 - (2) To the United States or to this state or to any instrumentality, agency or subdivision of either.
 - (3) Which, executed for nominal, inadequate, or no consideration, confirms, corrects or reforms a conveyance previously made.
 - (4) On sale for delinquent taxes or assessments.
 - (5) On partition.
 - (6) Pursuant to mergers of corporations.
 - (7) By a subsidiary corporation to its parent for no consideration, nominal consideration or in sole consideration of the parent.
 - (8) On transfer of capital stock between parent and subsidiary corporation.
 - (9) Between husband and wife or parent and child for nominal or no consideration.
 - (10) Between agent and principal or trustee and beneficiary without actual consideration.
 - (11) To provide or improve or increase security for a debt or obligation except as required by § 77.22.
 - (12) By will, testamentary instrument.
 - (13) Pursuant to or in lieu of condemnation.
- The fee is \$100 or less.

WISCONSIN REAL ESTATE TRANSFER RETURN

Wisconsin Department of Revenue

GRANTOR:

Name _____
 Social Security Number _____
 Full Address - New address if property transferred was residence _____

GRANTEE:

Name _____
 Social Security Number _____
 Full Address _____

Is grantor related to grantee? Relationship includes, marriage, blood relative, partner, lessee-lessor, co-owner, parent corporation or joint owner. ☐ Yes ☐ No

Grantor is ☐ Individual ☐ Partnership ☐ Corporation ☐ Other

Telephone: Grantor () -

Name and address to which tax bills should be sent _____

Telephone: Grantee () -

PART I - PROPERTY TRANSFERRED

Check proper box and enter name of municipality and county

☐ City ☐ Village ☐ Town of:
 County of: _____

Street address of property transferred include road name and/or fire number. _____

Legal Description (Fill in complete legal description in space below or if metes and bounds description attach 3 copies of it as shown on the instrument of conveyance. If certified survey map number is used in description list town, range, section and acres.)

Lot No. _____ Block No. _____ Plot Name _____

Town _____ Range _____ Section _____ Property Parcel Number _____

PART II - PHYSICAL DESCRIPTION AND INTENDED USE

- | | | | | |
|---|--|---|---|---|
| 1. Kind of Property | b. Residential Units, if any | 2. Principal Intended Use | 3. Land Area and Type | Estimated |
| a. <input type="checkbox"/> Land Only | <input type="checkbox"/> One Family | a. <input type="checkbox"/> Residential | d. <input type="checkbox"/> Agricultural | a. Lot size _____ x _____ <input type="checkbox"/> |
| <input type="checkbox"/> New Construction | <input type="checkbox"/> 2 and 3 units | b. <input type="checkbox"/> Commercial | e. <input type="checkbox"/> Recreational | b. _____ Total Acres <input type="checkbox"/> |
| <input type="checkbox"/> Building Previously Used | <input type="checkbox"/> 4 or more units | c. <input type="checkbox"/> Industrial | f. <input type="checkbox"/> Other (Explain) _____ | 1. _____ Tillable Acres |
| <input type="checkbox"/> Solar Design | c. <input type="checkbox"/> Rental | | | 2. _____ W.T.L. Acres |
| <input type="checkbox"/> Earth Sheltered Home | | | | 3. _____ F.C. Acres |
| <input type="checkbox"/> Condominium | | | | c. _____ Ft. of Water Frontage <input type="checkbox"/> |

PART III - TRANSFER (Answer as many as apply)

1. ☐ Sale 2. ☐ Gift 3. ☐ Exchange 4. ☐ Deed in satisfaction of land contract - What was the date of the original land contract? _____
5. ☐ Other transfers (Explain below) 6. Ownership interest transferred ☐ Full ☐ Other (Explain below) 7. What is the amount of mortgage assumed by grantee? \$ _____
8. Does the grantor retain any of the following rights: ☐ Life estate ☐ Easement ☐ Other (explain below).

PART IV - COMPUTATION OF FEE OR STATEMENT OF EXEMPTION

1. Total value of REAL ESTATE transferred (purchase price, etc., Do not include personal property) \$ _____
2. Value of personal property transferred but excluded from line 1 \$ _____
3. Value of tax exempt property (solar, wind, water easement, mfg. MSE, other) included in line 1 \$ _____
4. TRANSFER EXEMPTION NUMBER if exempt for Reasons 1-13 (see instructions) Sec. 77.25 1 _____
5. Fee - thirty cents per one hundred dollars of value (line 1 times .003) (Make check payable to Register of Deeds) \$ _____

PART V - CERTIFICATION

We declare under penalty of law, that this return (including any accompanying schedule) has been examined by us and to the best of our knowledge and belief it is true, correct and complete.

(Grantor understands that the transfer must be reported for Wisconsin Franchise or Income Tax purposes regardless of the Grantor's state of residence.)

SIGN HERE	Signature of Grantor or Agent	Date	Print or Type Agent's Name
	Signature of Grantee or Agent	Date	Print or Type Agent's Name
LEAVE THIS AREA BLANK	Document No. 5518569	Vol. (Rec'd) 1421	Page (Imag) 702
	Parcel Number	19	19
	A	B	C
	D	E	F
	Date Recorded 12/30/81	Date and Kind of Conveyance 12/24/81 M9	
	Code: County	Tax District	Assn's Dist.
	1 Office	2 Field	3 Use
	Ratio	Consideration	4 Reject

PE-500 (R. 7-81)

School District No. _____

PROPERTY OWNERS COPY

MDC 000462

*Rennie J. Green
Fisher Controls International Inc.
7711 Bonhomme
Clayton, Mo. 63105*

HDC 000461

REEL 1421 704

Milwaukee Die Casting Company, Inc., to me known to be the person who executed the foregoing instrument and acknowledged the same.

Sandra Hale

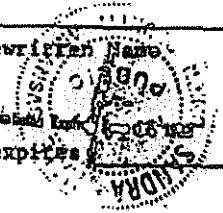
Sandra Hale

Printed or Typewritten Name

Notary Public

My Commission expires

A.D., 19



This instrument was drafted by Dennis J. Green.

And the said party of the first part does hereby warrant the title to said land, and will defend the same against the lawful claims of all persons claiming by, through or under it, but against none other and not otherwise.

IN WITNESS WHEREOF, the said party of the first part hereunto set its hand and seal the day and year first above written.

MILWAUKEE DIE CASTING COMPANY, INC.

By Larry W. Solley
Larry W. Solley
President



Signed, sealed and delivered in the presence of

Ken Goudy
(Ken Goudy)

5518569

Printed or Typewritten Name

Carolyn Beavers
Carolyn Beavers

REGISTER'S OFFICE
Milwaukee County, Wis.
RECORDED AT 11:35 AM

DEC 30 1981 702 to
REEL 1421 MAG 704 incl
REGISTER OF DEEDS

Printed or Typewritten Name

ATTEST:

Dennis J. Green
Dennis J. Green
Secretary



STATE OF ARKANSAS)

) SS

UNION COUNTY)

DOC 1
RECORD 9.00

Personally came before me, this 24th day of December, A.D., 1981, the above named Larry W. Solley, President of

SPECIAL WARRANTY DEED

This Indenture, made this 24th day of December, 1981, between Milwaukee Die Casting Company, Inc., a Delaware corporation, Grantor, party of the first part, and Fisher Controls Company, Inc., a Delaware corporation, Grantee, party of the second part, the parent of the Grantor.

Witnesseth, that the said party of the first part, by these presents does hereby convey and grant unto the said party of the second part and its assigns the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

That part of Government Lot 4 in the SW 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW 1/4; thence East on a line which is 855.00 ft. North of and parallel with the South line of said 1/4 Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North line of said Lot 4; thence West on said North line 380.50 ft. to a point 660.00 ft. East of the West line of said SW 1/4; thence South on a line 660.00 ft. East of and parallel with said West line 465.00 ft. to the point of beginning, excepting the West 33.00 ft. for street purposes.

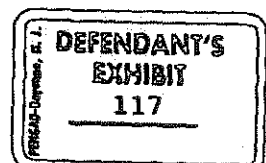
RECORDED
12-25-81
EXEMPT

SUBJECT TO zoning regulations, deed restrictions, easements and rights-of-way of record and to any state of facts, easements or matters which a correct survey or inspection of the premises would show.

(This conveyance is from a wholly-owned subsidiary to its parent corporation and is exempt from the Real Estate Conveyance Tax.)

400

HDC 000458



7

DX-117

Key No. E-8 241-9962		For possible Cloud on E-8 created by Q.C.D. 1860-611 to State of Wisconsin see E-6			
Abstractor _____		Date _____			
FEE 1311-247	W.D.	Date 12-21-29	Rec'd 12-23-29	Doc. No. 1752485	
	The Kspec Co. a Corp.		Milwaukee Die Casting Company		
MTG 2959-136	MTG \$150,000	8-8-51	8-14-51	3046565 ✓	
	Milwaukee Die Casting Company		The Northwestern Mutual Life Insurance Company		
MTG R408-978	Mtg. \$ 3300,000.00	3-14-68	3-14-68	4378964 mjk	
	Milwaukee Die Casting Company Rel by R1424-1603 d12-10-81 r1-20-82 #5521773 me		Marine National Exchange Bank of Milwaukee		
FEE R831-247	W.D. \$562.90 T.F.	1-14-75	1-15-75	4892647 paz	
	Milwaukee Die Casting Company Frederick J. Schroeder, Jr., Pres. Robert P. Harland, Ass't Sec.		Fisher Controls Company, Inc. Subj to Mtg. R408-978, #4378964 SEE COPY ATTACHED for desc, exam'ts etc		
FEE R831-250	W.D. \$562.90 T.F.	1-14-75	1-15-75	4892648 paz	
	Fisher Controls Company, Inc. James H. Boyd, V-Pres. Michael E. Leban, Ass't Sec.		Milwaukee Die Casting Company, Inc., 4132 N. Holton St. 53211 Subj to Mtg. R408-978, #4378964		
FEE R1421-702	DESC, exam'ts, etc same as R831-247	Sp. W.D. Exempt (?)	12-24-81	12-30-81	5518569 paz
	Milwaukee Die Casting Company, Inc. a Delaware corporation Desc same as R831-247 attached		Fischer Controls Company, Inc., a Delaware Corporation		
FEE R1430-292	Sp. W.D. \$4,425.00 T.F.	2-23-82	2-23-82	5526564 paz	
	Fischer Controls International, Inc. a Delaware corporation S. R. Pylipow, V-Pres. Desc same as R831-247 attached Mtg & Sec.		Theresa A. Slyman [REDACTED]		
MTG R1430-298	Agmt. \$1,500,000.00	2-23-82	2-23-82	5526566 paz	
	Theresa A. Slyman 4004 Huffman Rd, Medina Ohio 44256 & ORE (Glendale)		Milwaukee Die Casting Company, Inc., a Delaware corporation. 4132 N Holton St 53212 SEE ASS'T BELOW		
LEASE	Lease _____	2-23-82	Unrec		
	Theresa A. Slyman & ORE (Glendale) Ass't of Rents & Leases R1430-329 d2-23-82 r2-23-82 #5526567 to Milwaukee Die Casting Company, Inc. Ass't of Mtg & Lease Ass't R1430-353 d2-23-82 r2-23-82 #5526568 to Marine Midland Bank, N.A., One Marine Midland Center, Buffalo, N.Y. 14240		Milwaukee Die Casting Company, Inc., a Delaware corporation 4132 N. Holton St. [REDACTED]		

ASS'T of Mtg & Lease Ass't d2-23-82, r2-23-82 R1430-353 #5526568 to Marine Midland Bank, N.A.,
One Marine Midland Center
Buffalo, N.Y. 14240

F 5

DX-116

EXHIBIT A

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Huchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Coinstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One-quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale.

Tax Key Number: 242-1003

HDC 000497

WISCONSIN REAL ESTATE TRANSFER ACT

Wisconsin Department of Revenue

Name of Grantor
M. J. & C. J. Conroy Company
 Is grantor related to grantee? ☐ Yes ☒ No
 Address to which tax bills should be sent
1800 N. Lincoln St.
Milwaukee, Wisconsin 53211

Name and Full Address of Grantee
M. J. & C. J. Conroy Company, Inc.
1800 N. Lincoln Street
Milwaukee, Wisconsin 53211

COUNTY OF MILWAUKEE

Legal Description: If a legal description is given below or check 7 copies of full legal description from recorder of counties
 Lot No. _____ Dist. No. _____ Plat No. _____
 or metes and bounds description

SEE ATTACHED RETURN A.

PAGE II - PHYSICAL DESCRIPTION AND CURRENT USE

1. Kind of Property
☐ Land Only
☐ Minor Construction
☒ Outbuilding Properly Used
☐ Residential Units, if any
☐ One Family
☐ 2 thru 7 Units
☐ 8 or more Units

2. Physical Intended Use
☐ Residential
☐ Commercial
☒ Industrial
☐ Agricultural
☐ Other (Specify) _____

3. Land Area and Type
 a. Lot Size - Acreage ☐
☒ Bldg. & Lot
 b. Total Area - Acreage ☐
 1. Total Area
 2. W.T.L. Area
 3. P.C. Area
 c. Total of Water Frontage (Acreage) ☐

PAGE III - TAXATION

1. ☐ Sale 2. ☐ Gift 3. ☐ Exchange 4. ☐ Deed in satisfaction of L.C. debt
 5. ☐ Other (Specify) _____

PAGE IV - ADDITIONAL INFORMATION

1. Total value of real estate transferred (including improvements) \$ 118,164.15
 2. Ownership interest transferred ☒ Full ☐ Other _____
 3. Fee _____
 4. Is your opinion, was this sale or transfer made at fair market value? ☐ Yes ☐ No ☒ No Opinion (If so or, no opinion, explain)

I (We) declare under penalty of law, that this return (including any accompanying schedule) has been prepared by me (and to the best of my (our) knowledge and belief it is true, correct and complete.

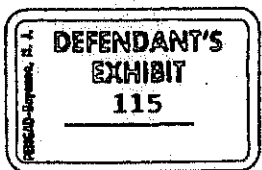
Signature of Grantor or Agent [Signature] Date 11/18/11

LEAVE THIS AREA BLANK	Record No.	Vol. No.	Page No.	Book No.	Page No.	Book No.	Page No.	Book No.	Page No.
	1816415	231	43	11816415	11816415	11816415	11816415	11816415	11816415

DE 1000 (10-1-73)

PROPERTY OWNER COPY

MDC 000496



DX-115

Form National Title Insurance Company
THIS CHECK MUST BE DEPOSITED IN A CHECKING ACCOUNT WITHIN 90 DAYS OF THE DATE OF THE SALE

ORDER NO. 40-710-C
NTI

RECEIVED
000 North Lincolnshire Blvd.
St. Louis, Mo 63106
Attn: Donald J. Green

AMOUNT RECEIVED

THIS CHECK MUST BE DEPOSITED IN A CHECKING ACCOUNT WITHIN 90 DAYS OF THE DATE OF THE SALE
CUSTOMER'S
4116 N. Hubbard MILWAUKEE WIS CASTLE COMPANY/ ORDER NO. 40-710-C

1/15/79 RECEIVED
Transfer Fee 027.00 027.00

Form National Title Insurance Company
THIS CHECK MUST BE DEPOSITED IN A CHECKING ACCOUNT WITHIN 90 DAYS OF THE DATE OF THE SALE

ORDER NO. 40-600-C
NTI

RECEIVED
000 North Lincolnshire Blvd.
St. Louis, Mo 63106
Attn: Donald J. Green

AMOUNT RECEIVED

THIS CHECK MUST BE DEPOSITED IN A CHECKING ACCOUNT WITHIN 90 DAYS OF THE DATE OF THE SALE
CUSTOMER'S
4116 N. Hubbard St. MILWAUKEE WIS CASTLE COMPANY/ ORDER NO. 40-600-C

1/15/79 RECEIVED
Transfer Fee 0232.00 0232.00

HDC 000478

DEFENDANT'S
EXHIBIT
114

14.

9X-114

Return to.

Monkato
800 N. Lindbergh Blvd
St Louis, Mo 63106
Attn: Dennis J. Green

HDC 000505

पृ. सं. २४९

Notary Public, Milwaukee County, WI

10

MDC 000504

of the above-described premises lying within the limits of public roads and public rights of way, encroachment upon the insured premises to the maximum extent of 2.4 feet by railroad track adjacent to the premises on the west as disclosed by survey number 111116-3 dated December 23, 1971 by Kenneth E. Berke, surveyor, encroachment upon the insured premises to the maximum extent of 2.4 feet by walk adjacent to the premises on the west as disclosed by survey number 111116-3 dated December 23, 1971 by Kenneth E. Berke, surveyor, a Mortgage dated March 11, 1968 and recorded on the same date, reel 308 of our public records, in the 978 to 980, Document Number 4378961, according to the terms and provisions thereof, from Milwaukee Die Casting Company, a Wisconsin corporation, of Milwaukee County, Wisconsin to the Marine National Exchange Bank of Milwaukee, to secure an indebtedness of \$300,000.00, and any other amount payable under the terms thereof, and the following recorded encumbrances:

- (a) An easement for pole lines and incidental purposes, as granted to Wisconsin Electric Power Company in an instrument according to the terms and provisions thereof.
 Dated: March 8, 1951 Recorded: April 6, 1951
 Volume: 2864 of Deeds Page: 119
 Document Number: 3016362
- (b) An easement for pole lines and incidental purposes, as granted to Wisconsin Electric Power Company in an instrument according to the terms and provisions thereof.
 Dated: October 5, 1951 Recorded: November 14, 1951
 Volume: 2951 of Deeds Page: 604
 Document Number: 3068975
- (c) An easement for sewer and incidental purposes, as granted to Metropolitan Sewerage Commission in an instrument, according to the terms and provisions thereof.
 Dated: July 28, 1922 Recorded: December 22, 1922
 Volume: 940 of Deeds Page: 522
 Document Number: 1183565

and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, it will forever WARRANT and DEFEND.

IN WITNESS WHEREOF, the said Milwaukee Die Casting Company, party of the first part, has caused these presents to be signed by Frederick J. Schroeder, Jr., its President, and countersigned by Robert P. Harland, its Assistant Secretary, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed, this 11th day of January, A.D., 1975.

Signed and Sealed in Presence of

MILWAUKEE DIE CASTING COMPANY

Barbara Annelle

Frederick J. Schroeder, Jr.
 Frederick J. Schroeder, Jr., President

COUNTERSIGNED:

Robert P. Harland

Robert P. Harland
 Robert P. Harland, Assistant Secretary

This Last Will, Made this 17th day of January, A.D., 1925, between Will A. ... and ...

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) ...

That part of Government Lot 4 in the S W 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 854.00 ft. North of the South line and 660.00 ft. East of the West line of said S W 1/4; thence East on a line which is 854.00 ft. North of and parallel with the South line of said 1/4 Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 22; thence North along said West line of said right of way 485.00 ft. to the North line of said Lot 4; thence West on said North line 320.50 ft. to a point 660.00 ft. East of the West line of said S W 1/4; thence South on a line 660.00 ft. East of and parallel with said West line 485.00 ft. to the point of beginning, excepting the West 33.00 ft. for street purposes.

Tax Key Number: 241-0082

Together with all and singular the hereditaments and appurtenances thereto belonging or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, and their hereditaments and appurtenances.

To Have and to Hold the said premises as above described with the hereditaments and appurtenances, unto the said party of the second part, and to its successors and assigns FOREVER.

And the said Milwaukee Die Casting Company, party of the first part, for itself and its successors, does covenant, grant, bargain and agree to and with the said party of the second part, its successors and assigns, that at the time of the enrolling and delivery of these presents it is well seized of the premises above described, as of a good, pure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, excepting zoning ordinances, building restrictions, of record, rights of the public in that portion

RECORDED AT 15 JAN 20 1925

241-0082

HDC 000502

DEFENDANT'S EXHIBIT 113

0X413

WARRANTY DEED

THIS INDENTURE, Made this 17 day of January, A. D., 1975, between MILWAUKEE DIE CASTING COMPANY, a Corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, located at Milwaukee, Wisconsin, party of the first part, and FEEHEI CONTROLS COMPANY, INC., a Corporation duly organized and existing under and by virtue of the laws of the State of Delaware, located at Marshalltown, Iowa, party of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, to it paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, has given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents does give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, its successors and assigns forever, the following described real estate situated in the County of Milwaukee and State of Wisconsin, to-wit:

Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jox, Huchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five (5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One-quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale.

TRANSF
21-95
115

Tax Key Number: 242-1003

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said party of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, and their hereditaments and appurtenances.

To Have and to hold the said premises as above described with the hereditaments and appurtenances, unto the said party of the second part, and to its successors and assigns FOREVER.

And the said Milwaukee Die Casting Company, party of the first part, for itself and its successors, does covenant, grant, bargain and agree in and with the said party of the second part, its successors and assigns, that at the time of the executing and delivery of these presents it is well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever, excepting zoning ordinances and building restrictions of record and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, it will forever WARRANT and DEFEND.

28 JAN 21 1975

RECORDED AT 11:30 AM

JAN 15 1975
243-244

HDC 000498

DEFENDANT'S
EXHIBIT
112

DAY

831 DEC 244

PX-112

Received for Record

December 9th, A. D. 1974.

Leo J. Dugan, Jr., Recorder.

STATE OF DELAWARE :
: SS.:
NEW CASTLE COUNTY :

Recorded in the Recorder's Office at
Wilmington, in Incorporation Record ,
Vol. Page &c., the 9th day
of December, A. D. 1974.

Witness my hand and official seal.

Leo J. Dugan, Jr.
Recorder.

" Recorder's Office "
" New Castle Co. Del. "
" Mercy Justice "

MDC 000011

STATE OF DELAWARE
OFFICE OF SECRETARY OF STATE

I, ROBERT H. REED, Secretary of State of the State of Delaware, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "MILWAUKEE DIE CASTING COMPANY, INC.", as received and filed in this office the ninth day of December, A. D. 1974, at 10 o'clock A. M.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Dover this ninth day of December in the year of our Lord one thousand nine hundred and seventy-four.

ROBERT H. REED
Secretary of State

G. A. BIDDLE
Ass't. Secretary of State

" Secretary's Office "
" "
" 1855 Delaware 1793 "
#####

MDC 000010

facts herein stated are true, and accordingly have hereunto
set our hands this 9th day of December, 1974.

B. A. Pennington

W. J. Reif

R. F. Andrews

MDC 000009

FIFTH. The name and mailing address of each incorporator is as follows:

<u>NAME</u>	<u>MAILING ADDRESS</u>
B. A. Pennington	100 West Tenth Street Wilmington, Delaware 19801
W. J. Reif	100 West Tenth Street Wilmington, Delaware 19801
R. F. Andrews	100 West Tenth Street Wilmington, Delaware 19801

SIXTH. The corporation is to have perpetual existence.

SEVENTH. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

EIGHTH. Election of directors need not be by written ballot.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is our act and deed and the

MDC 000008

CERTIFICATE OF INCORPORATION
OF
MILWAUKEE DIE CASTING COMPANY, INC.

---ooOoo---

FIRST. The name of the corporation is
MILWAUKEE DIE CASTING COMPANY, INC.

SECOND. The address of its registered office in
the State of Delaware is No. 100 West Tenth Street, in the
City of Wilmington, County of New Castle. The name of its
registered agent at such address is The Corporation Trust
Company.

THIRD. The nature of the business or purposes to
be conducted or promoted is:

~~To engage in any lawful act or activity for which~~
corporations may be organized under the General Corporation
Law of Delaware.

FOURTH. The total number of shares of stock
which the corporation shall have authority to issue is
one thousand (1,000) and the par value of each of such
shares is One Dollar (\$1.00) amounting in the aggregate
to One Thousand Dollars (\$1,000.00).

MDC 000007



DX-111

(5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One Quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale, and

(iii) all the buildings and fixtures and improvements thereon,

on all the issued and outstanding shares of Stock, \$1.00 par value, of this Company, payable December 23, 1981, to Fisher Controls Company, Inc., the holder of record of such stock at the close of business on December 22, 1981.

FURTHER RESOLVED, that the officers and directors of the Company and of Fisher Controls International, Inc. be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Company, to take, or cause to be taken, such final actions on all such matters as they or any of them may deem necessary or advisable to carry out the intent and purposes of the foregoing resolution, including, without limitation, the power to execute, file, deliver, verify, acknowledge and deliver, or cause the same to be done, and under the Company's corporate seal or otherwise, any and all deeds, bills of sale, certificates, agreements, instruments and documents relating thereto.


J. Kruse

MILWAUKEE DIE CASTING COMPANY, INC.

ACTION THROUGH UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS

I, a Director of Milwaukee Die Casting Company, Inc., do hereby consent and agree to the adoption of the following resolution effective December 22, 1981, with the same force and effect as if adopted at a meeting of the Board of Directors duly called and held:

RESOLVED, that there be and hereby is declared a dividend of the following property in the County of Milwaukee, State of Wisconsin:

(i) That part of Government Lot 4 in the SW 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW 1/4; thence East on a line which is 855.00 ft. North of and parallel with the South line of said 1/4 Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North line of said Lot 4; thence West on said North line 380.50 ft. to a point 660.00 ft. East of the West line of said SW 1/4; thence South on a line 660.00 ft. East of and parallel with said West line 465.00 ft. to the point of beginning, excepting the West 33.00 ft. for street purposes.


(ii) Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five

(5) and the Southeast One-quarter (1/4) of Section numbered Five (5) and the Northwest One Quarter (1/4) of Section numbered Four (4) in Township numbered Seven (7) North, of Range numbered Twenty-two (22) East, in the City of Glendale, and

(iii) all the buildings and fixtures and improvements thereon,

on all the issued and outstanding shares of Stock, \$1.00 par value, of this Company, payable December 23, 1981, to Fisher Controls Company, Inc., the holder of record of such stock at the close of business on December 22, 1981.

FURTHER RESOLVED, that the officers and directors of the Company and of Fisher Controls International, Inc. be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Company, to take, or cause to be taken, such final actions on all such matters as they or any of them may deem necessary or advisable to carry out the intent and purposes of the foregoing resolution, including, without limitation, the power to execute, file, deliver, verify, acknowledge and deliver, or cause the same to be done, and under the Company's corporate seal or otherwise, any and all deeds, bills of sale, certificates, agreements, instruments and documents relating thereto.


L. W. Solley

MILWAUKEE DIE CASTING COMPANY, INC.

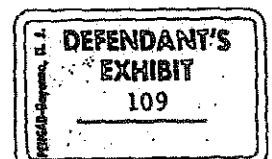
ACTION THROUGH UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS

I, a Director of Milwaukee Die Casting Company, Inc., do hereby consent and agree to the adoption of the following resolution effective December 22, 1981, with the same force and effect as if adopted at a meeting of the Board of Directors duly called and held:

RESOLVED, that there be and hereby is declared a dividend of the following property in the County of Milwaukee, State of Wisconsin:

- (i) That part of Government Lot 4 in the SW 1/4 of Fractional Section 4, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows: Commencing at a point which is 855.00 ft. North of the South line and 660.00 ft. East of the West line of said SW 1/4; thence East on a line which is 855.00 ft. North of and parallel with the South line of said 1/4 Section 380.50 ft. to a point in the West line of the Westerly right of way conveying to the Chicago, Milwaukee and St. Paul Railway Company by deed recorded in the Office of the Register of Deeds of Milwaukee County in Volume 822 on Page 227; thence North along said West line of said right of way 465.00 ft. to the North line of said Lot 4; thence West on said North line 380.50 ft. to a point 660.00 ft. East of the West line of said SW 1/4; thence South on a line 660.00 ft. East of and parallel with said West line 465.00 ft. to the point of beginning, excepting the West 33.00 ft. for street purposes.
- (ii) Lots numbered Twenty-six (26), Twenty-seven (27), Twenty-eight (28) and the South Nine (9) feet of Lot numbered Twenty-nine (29) in Block numbered One (1) in Jos. Buchta's Subdivision of Lots numbered Ninety-two (92), Ninety-three (93), One Hundred and Three (103) and One Hundred and Four (104), in Comstock & Williams Subdivision of Lots numbered One (1), Two (2), Three (3), Four (4) and Five (5) of Section numbered Five

HDC 000056



RESOLVED, that the Milwaukee Die Casting Company Profit Sharing Retirement Plan, as amended, and the Milwaukee Die Casting Company Senior Pension Plan and Trust (As Amended), be further amended insofar as necessary to reflect the adoption and continuance by this Company of such Profit Sharing Retirement Plan, as amended, and Senior Pension Plan and Trust (As Amended), and that the officers of the Company be, and each of them hereby is, authorized to take such actions and to execute such further instruments and documents, as he may deem necessary or desirable to carry out the purpose and intent of the foregoing resolutions.


J. H. Boyd


Michael E. Leban
M. E. Leban


T. M. Shive

MILWAUKEE DIE CASTING COMPANY, INC.

**ACTION THROUGH UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS**

We, the undersigned directors of Milwaukee Die Casting Company, Inc. do hereby consent and agree to the adoption of the following resolutions effective January 13, 1975, with the same force and effect as if adopted at a meeting of the Board of Directors duly called and held:

WHEREAS, by resolution of its Board of Directors, Milwaukee Die Casting Company, a Wisconsin corporation ("MDCC"), has transferred all of its interest and obligations under the Milwaukee Die Casting Company Profit Sharing Retirement Plan, as amended, and Milwaukee Die Casting Company Senior Pension Plan and Trust (As Amended) to Fisher Controls Company, Inc. ("Fisher") effective January 14, 1975, pursuant to and in accordance with the terms and provisions of the Plan and Agreement of Acquisition dated December 13, 1974, between MDCC and Fisher;

WHEREAS, Fisher has accepted such transfer and;

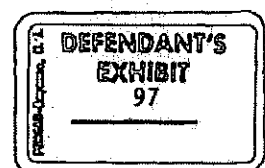
WHEREAS, pursuant to resolution of its Board of Directors, Fisher will transfer all of its interest and obligations under said plans to this Company, effective January 14, 1975.

NOW, THEREFORE, BE IT RESOLVED, that this Company accepts, adopts and continues effective January 14, 1975, the employee benefit plan known as the "Milwaukee Die Casting Company Profit Sharing Retirement Plan", as amended, previously established by MDCC.

RESOLVED, that this Company accepts, adopts and continues effective January 14, 1975, the employee benefit plan known as the "Milwaukee Die Casting Company Senior Pension Plan and Trust (As Amended)", previously established by MDCC.

RESOLVED, that the officers of the Company be, and each hereby is, authorized to deliver certified copies of these resolutions to the Marine National Exchange Bank of Milwaukee, as Trustee, and the Board of Directors of MDCC, in the name and on behalf of the Company, and that the same shall constitute the Company's written election pursuant to Section 8.05 of the Milwaukee Die Casting Company Profit Sharing Retirement Plan and pursuant to Section 8(k) of the Milwaukee Die Casting Company Senior Pension Plan and Trust (As Amended).

MDC 000036



DX-97


J. H. Boyd


M. E. Leban

T. M. Shive

3. The board of directors was authorized, in its discretion, to issue the shares of the capital stock of this corporation to the full amount or number of shares authorized by the certificate of incorporation, in such amounts and for such considerations as from time to time shall be determined by the board of directors and as may be permitted by law.

Dated, December 9th, 1974.


Incorporator


Incorporator


Incorporator

STATEMENT OF INCORPORATORS
IN LIEU OF ORGANIZATION
MEETING
OF
MILWAUKEE DIE CASTING COMPANY, INC.

---ooOoo---

The certificate of incorporation of this corporation having been filed in the office of the Secretary of State, the undersigned, being all of the incorporators named in said certificate, do hereby state that the following actions were taken on this day for the purpose of organizing this corporation:

1. By-laws for the regulation of the affairs of the corporation were adopted by the undersigned incorporators and were ordered inserted in the minute book immediately following the copy of the certificate of incorporation and before this instrument.

2. The following persons were elected as directors to hold office until the first annual meeting of stockholders or until their respective successors are elected and qualified:

MDC 000029

FISCAL YEAR

Section 5. The fiscal year of the corporation shall be the calendar year.

SEAL

Section 6. The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

AMENDMENTS

Section 1. These by-laws may be altered, amended or repealed by the affirmative vote of the holders of a majority of the stock issued and outstanding and entitled to vote, cast at any annual or special meeting of the stockholders or by the affirmative vote of a majority of the whole board of directors at any regular or special meeting of the board of directors.

pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

Section 2. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interest of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

ANNUAL STATEMENT

Section 3. The board of directors shall, when called for by the vote of the holders, present a full and clear statement of the business and condition of the corporation.

CHECKS

Section 4. All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the board of directors may from time to time designate.

of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

REGISTERED STOCKHOLDERS

Section 4. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII

GENERAL PROVISIONS

DIVIDENDS

Section 1. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting,

ARTICLE VI

CERTIFICATES OF STOCK

Section 1. Every holder of stock in the corporation shall be entitled to have a certificate, signed by, or in the name of the corporation by, the president or a vice-president, and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation.

Section 2. Where a certificate is countersigned (1) by a transfer agent other than the corporation or its employee, or, (2) by a registrar other than the corporation or its employee, the signatures of the officers of the corporation may be facsimile. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of issue.

TRANSFERS OF STOCK

Section 3. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence

MDC 000025

render to the board of directors, when the board of directors so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

Section 12. If required by the board of directors, he shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 13. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors (or if there be no such determination, then in the order of their election), shall, in the absence of the treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 9. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors (or if there be no such determination, then in the order of their election), shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

THE TREASURER AND ASSISTANT TREASURERS

Section 10. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to credit of the corporation in such depositories as may be designated by the board of directors.

Section 11. He shall disburse the funds of the corporation as may be ordered by the board of directors, taking proper vouchers for such disbursements, and shall

vice-presidents in the order designated, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

THE SECRETARY AND ASSISTANT SECRETARIES

Section 8. The secretary shall attend all meetings of the board of directors and all meetings of the stockholders and record all the proceedings of the meeting of the corporation and of the board of directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the board of directors, and shall perform such other duties as may be prescribed by the board of directors or president, under whose supervision he shall be. He shall have custody of the corporate seal of the corporation and he, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The board of directors

who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board.

Section 4. The salaries of all officers and agents of the corporation shall be fixed by the board of directors.

Section 5. The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the board of directors may be removed at any time with or without cause by the affirmative vote of a majority of the board of directors.

THE PRESIDENT

Section 6. The president shall be the chief executive officer of the corporation, shall preside at all meetings of the stockholders and the board of directors, shall be ex officio a member of all standing committees, shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the board of directors are carried into effect.

THE VICE-PRESIDENTS

Section 7. In the absence of the president or in the event of his inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the

MDC 000021

Section 2. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these by-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE V

OFFICERS

Section 1. The officers of the corporation shall be chosen by the board of directors and shall be a president, a vice-president, a secretary and a treasurer. The board of directors may also choose additional vice-presidents, and one or more assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these by-laws otherwise provide.

Section 2. The board of directors at its first meeting after such annual meeting of stockholders shall choose a president, one or more vice-presidents, a secretary and a treasurer.

Section 3. The board of directors may choose such other officers and agents as it shall deem necessary

COMPENSATION OF DIRECTORS

Section 9. The directors may be paid their expenses, if any, of attendance at each meeting of the board of directors and may be paid a fixed sum for attendance at each meeting of the board of directors or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

ARTICLE IV

NOTICES

Section 1. Whenever, under the provisions of the statutes or of the certificate of incorporation or of these by-laws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

MDC 000019

Section 6. Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

Section 7. Special meetings of the board may be called by the president on two days' notice to each director, either personally or by mail or by telegram; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two directors.

Section 8. At all meetings of the board two directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

by the certificate of incorporation or by these by-laws directed or required to be exercised or done by the stockholders.

MEETINGS OF THE BOARD OF DIRECTORS

Section 4. The board of directors of the corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 5. The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

ARTICLE III

DIRECTORS

Section 1. The number of directors which shall constitute the whole board shall be not less than three nor more than six. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified. Directors need not be stockholders.

Section 2. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, or by a majority of the shareholders and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. Any director may be removed at any time with or without cause, by the affirmative vote of a majority of the remaining directors then in office, though less than a quorum.

Section 3. The business of the corporation shall be managed by its board of directors which may exercise all such powers of the corporation and do all such lawful acts and things as are now by statute or

holders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation, a different vote is required in which case such express provision shall govern and control the decision of such question.

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Section 4. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the board of directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

Section 5. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than fifty days before the date of the meeting, to each stockholder entitled to vote at such meeting.

Section 6. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stock-

directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the notice of the meeting. Meetings of stockholders for any other purpose may be held at such time and place, within or without the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual meetings of stockholders, commencing with the year 1976, shall be held on the third Tuesday of April if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:30 a.m., or at such other date and time as shall be designated from time to time by the board of directors and stated in the notice of the meeting, at which they shall elect by a plurality vote a board of directors, and transact such other business as may properly be brought before the meeting.

Section 3. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than fifty days before the date of the meeting.

MILWAUKEE DIE CASTING COMPANY, INC.

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BY - LAWS

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ARTICLE I

OFFICES

Section 1. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

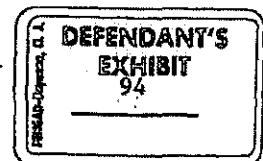
Section 2. The corporation may also have offices at such other places both within and without the State of Delaware as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. All meetings of the stockholders for the election of directors shall be held in the County of St. Louis, State of Missouri, at such place as may be fixed from time to time by the board of

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CONFIDENTIAL

FISHER CONTROLS MDCC DIVISION CASH FLOW

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	(< \$ Thousands >)					
	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
SOURCES OF CASH						
Income Before Tax	334	563	1119	737	1394	1567
Depreciation	161	186	209	240	214	231
LIFO Adjustment	<u>9</u>	<u>168</u>	<u>(159)</u>	<u>(28)</u>	<u>1</u>	<u>109</u>
Total Sources	504	917	1169	949	1609	1907
REQUIREMENTS FOR CASH						
Capital Expenditures	55	461	371	176	455	350
<u>Working Capital Changes:</u>						
Trade Receivables	110	(198)	(96)	214	197	(437)
Inter Co. Receivables	(46)	161	(19)	(60)	101	35
Inventories (FIFO)	(68)	286	133	124	183	96
Accounts Payable & Accrued Expenses	224	(178)	10	(331)	(82)	43
Other Working Capital Items	55	(77)	31	(39)	29	4
Tax Payments	134	361	365	450	301	735
Repayment of Debt	86	25	31	25	19	-
Other	<u>(30)</u>	<u>(2)</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Requirements	<u>520</u>	<u>839</u>	<u>826</u>	<u>559</u>	<u>1203</u>	<u>826</u>
NET CASH FLOW	(16)	78	343	390	406	1081
Beginning Cash Flow	125	109	187	530	920	1326
Ending Cash Balance	109	187	530	920	1326	2407

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**FISHER CONTROLS
MDCC DIVISION
INCOME STATEMENTS**

<\$ Thousands>

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
SALES	3699	5593	6855	6964	8623	8709
COST OF SALES	<u>3151</u>	<u>4487</u>	<u>5142</u>	<u>5733</u>	<u>6573</u>	<u>6506</u>
GROSS PROFIT	818	1106	1713	1231	2050	2203
MAT:						
Marketing Commissions	34	32	36	32	33	31
Marketing - Other	35	41	21	26	5	6
Administrative	409	421	462	411	597	590
Technical	-	68	77	23	24	11
Total MAT	<u>478</u>	<u>562</u>	<u>596</u>	<u>492</u>	<u>659</u>	<u>638</u>
Operating Income	340	544	1117	739	1391	1565
Other Income (Expense):						
Interest	(5)	10	(4)	(1)	(2)	4
Other	<u>(1)</u>	<u>9</u>	<u>6</u>	<u>(1)</u>	<u>5</u>	<u>(2)</u>
Income before Taxes	334	563	1119	737	1394	1567
Provision for Taxes	<u>171</u>	<u>259</u>	<u>512</u>	<u>368</u>	<u>590</u>	<u>764</u>
NET INCOME	<u>163</u>	<u>304</u>	<u>607</u>	<u>369</u>	<u>804</u>	<u>803</u>
CUMULATIVE NET INCOME	<u>163</u>	<u>467</u>	<u>1074</u>	<u>1443</u>	<u>2247</u>	<u>3050</u>
Capital Employed	<u>2147</u>	<u>2312</u>	<u>2676</u>	<u>2613</u>	<u>3405</u>	<u>2989</u>
Operating Income % of Capital Employed	<u>15.8</u>	<u>23.5</u>	<u>41.7</u>	<u>28.3</u>	<u>40.9</u>	<u>51.3</u>

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IX. FINANCIAL DATA

- o Milwaukee Die Casting Company has an outstanding sales, profit and cash flow history. In 1980, sales totaled \$8.7 million with 18% PFO, (profit from operations before taxes) on sales. MDCC has had a 6.5% real growth rate in sales from 1975 to 1980. An American Die Casting Institute Financial Survey taken in mid-1980 shows the upper quartile die casting firms making an average of 12% PFO on sales. MDCC's return on capital employed (before tax) averaged approximately 51.3% in 1980.
- o The next three pages give financial schedules which represent critical financial data for the years 1975 to 1980 inclusive.

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Management Profiles (Con't.)

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- o Maynard Pribek, Mgr, Process Engineering, age 44;
employed by MDCC four years. He received an AAS in ^{INDUSTRIAL} international management from the Milwaukee School of Engineering (MSOE) in 1963 and a BBA in business management from Spencerian College in 1966. He is currently working toward an MS in industrial management at MSOE. Prior to joining MDCC, he had work experience as a sales engineer, manufacturing engineer, industrial engineer, and production supervisor.
- o Duane Raetz, Mgr, Industrial Relations and Personnel,
age 49; employed by MDCC two years. He obtained a BS in Economics from the University of Wisconsin in 1962 after four years in the U. S. Navy. Previous experience included management consulting and personnel related work with public and private employers.
- o Ruth Russell, Mgr, Finance, age 30; employed by MDCC two years. She graduated from the University of Wisconsin in 1976 with a BBA, accounting. She is a CPA. Prior to joining MDCC, she worked in the accounting department of the RTE corporation.
- o Joe Baldukas, Mgr, Production Control, age 33;
employed by MDCC one year. He graduated from the Milwaukee School of Engineering. Prior to joining MDCC, he acquired experience in production control most recently with McQuay-Perfex, Inc.

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Employees (Con't)

(after contract ratification) is approximately \$7.66 hourly.

- o MDCC operates a very successful incentive system which was started in 1959. Except for a brief strike in the early 1950's, the good relationships which exist with the union have resulted in there having been no work interruptions.

VIII. MANAGEMENT PROFILES

- o Art Rogers, an employee of Fisher Controls, Marshalltown, is currently serving as General Manager on an interim basis as a result of the death of the former General Manager. He is supported by well qualified managers who provide a strong and experienced team to manage the business. Summary profiles of the key managers are given below.
- o Earl H. Suess, Mgr. Product Engineering, age 57; employed by MDCC 35 years. Studied at Milwaukee Area Technical college to complete his tool and die apprenticeship.
- o Mike Mathews, Production Superintendent, age 30; employed by MDCC four years. He has BBA Business Administration from the University of Wisconsin. He was previously four years with International Harvester.

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Customers (Con't)

for a further 12% of MDCC sales. MDCC does not give preferential pricing to Fisher Controls Company.

VI. SUPPLIERS

- o Metal in the form of ingots accounts for some 90% of material purchases. Ingots are purchased from seven metal dealers, namely, Aluminum Smelting and Refining, Apex International Alloys, Certified Alloys, Imperial Smelting, Spectro Alloy's, Alchem and Wabash Alloys, Inc.

VII. EMPLOYEES

- o As of October 1, 1981, MDCC personnel numbered 96 employees in total. A breakdown by category is given below:

Number of Employees

Hourly	69
Non Exempt	7
Exempt	<u>20</u>
	<u>96</u>

- o The labor force is represented by a union, International Association of Machinists (I.A.M). A two year contract was negotiated in September, 1981. The settlement included wage increases of 8.75% (first year) and 9.25% (second year). The contract has no C.O.L.A. provision. Average hourly rate

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Customers (Con't)

detailed in the table below.

<u>Name</u>	<u>Office</u>	<u>Territory</u>
S. E. Gregory Co.	Chicago, Ill.	Illinois
RTS Sales Co.	Nashville, Tenn.	Tennessee, N. Alabama
T. S. Kaminski & Co.	Indianapolis	Indiana, Kentucky, S. Ohio

- o The key customers are listed in the table below:

<u>Customer</u>	<u>Industry</u>	<u>% MDCC Sales in 1980</u>
Fisher Controls	Process Controls	41.8
Allen Bradley	Electrical Equipment	7.8
Square D	Electrical Equipment	7.4
Cutler Hammer	Electrical Equipment	5.7
Chrysler Outboard	Internal Combustion	4.1
Oster Corporation	Appliances	<u>15.4</u>
	Total	<u>82.2</u>

- o This table shows that six customers account for 82.2% of total company sales; seven other customers account

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IV. MARKETS SERVED BY MDCC

- o MDCC focuses on the aluminum and zinc die casting business. Its products are "functional" in nature as opposed to "decorative", concentrating on functional parts of industrial and consumer products. Its products are stable, they are industry leaders and have long product cycles. These factors help to ensure optimum long term profitability. The product mix is approximately 65% aluminum and 35% zinc die casting.
- o The major market segment served by MDCC is process controls (41.8% of MDCC sales in 1980) with the second largest market segment being the electrical equipment (20.0% of sales in 1980). The company has other important markets, internal combustion engines including outboard motors for which MDCC casts die parts, and appliances (17.5% of MDCC sales in 1980).

V. CUSTOMERS

- o MDCC supplies custom made zinc and aluminum base die castings to customers located primarily in four geographical regions of the United States: East North America, West North Central, West South Central and South Atlantic.
- o These sales are predominantly through salaried sales personnel based at the home office. MDCC has three manufacturer's representatives who cover territories

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Die Casting Department (Con't).

limited to parts which have adequate order quantity compatible casting design, and cavity commonality. In addition, dies must be designed for robot application.

3. Machining Department

- o The machine shop has a variety of drill presses, tapping machines, lathes, finishing equipment, and multi-purpose machines.

4. Tooling Department

- o Milwaukee Die Casting Company does not manufacture casting or trim dies on an in-house basis. The primary purpose of the tool room is to provide in-house die maintenance and minor modification as well as provide support for the machining department.

III. PLANT CAPACITY

- o The current capacity of the plant operating on the basis of two shifts and five days/week, with a normal product mix, is estimated at \$13 million/year.
- o In 1977, a feasibility study was completed. The study concluded that the building at the existing site could be expanded by a maximum of 27,000 square feet. This would represent a 38% increase in the current plant area.

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Manufacturing Process (Con't)

furnace. Molten metal is then distributed by power ladle cart to small furnaces at each die casting machine. Molten metal is then either hand poured, power ladled, or injected into die cavities under pressure. As the dies are retracted, ejector pins separate parts from the dies.

- o Parts including gating material are retrieved by manual or robotic methods and placed into tote boxes. Upon part retrieval, the die casting machine repeats the cycle.
- o Tote boxes of parts are then transferred to trim operations where gating is removed with punch press. Vibratory or sand blasting methods are utilized to provide proper surface finishes.
- o Depending upon order requirements, simple machining operations are performed, such as, drilling, tapping, milling, grinding and metal turning. During all operations, quality is assured by floor inspection. Parts receive a final inspection before boxing and shipping.

2. Die Casting Department

- o MDCC presently has 14 aluminum die cast machines ranging from 400 to 800 ton capacity, and ~~zinc~~ zinc cast machines ranging from 150 to 600 ton capacity.
- o Robots are used on four aluminum and four zinc machines. However, use of robots (extractors) is

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I. BACKGROUND

- o The Milwaukee Die Casting Company, Inc. (MDCC), a Delaware corporation with facilities in Milwaukee, Wisconsin, is owned by Fisher Controls Company, Inc. of Marshalltown, Iowa. MDCC, founded in Milwaukee, Wisconsin in 1909, is a manufacturer of zinc and aluminum die castings. It was acquired by Fisher Controls in 1975.
- o As of October 1981, MDCC had 96 employees. In 1980, sales of the company were approximately \$9 million and over the past years the company has demonstrated very good sales growth and profit performance.
- o The major market of MDCC is the process controls industry. The company also serves the electrical equipment, appliance and internal combustion engine markets.
- o MDCC's customers are located primarily in four geographical regions of the United States, East North Central, West North Central, West South Central and South Atlantic.

II. DESCRIPTION OF THE OPERATIONS

1. Manufacturing Process

- o Die casting operations begin with raw materials in the form of ingots which are melted in a breakdown

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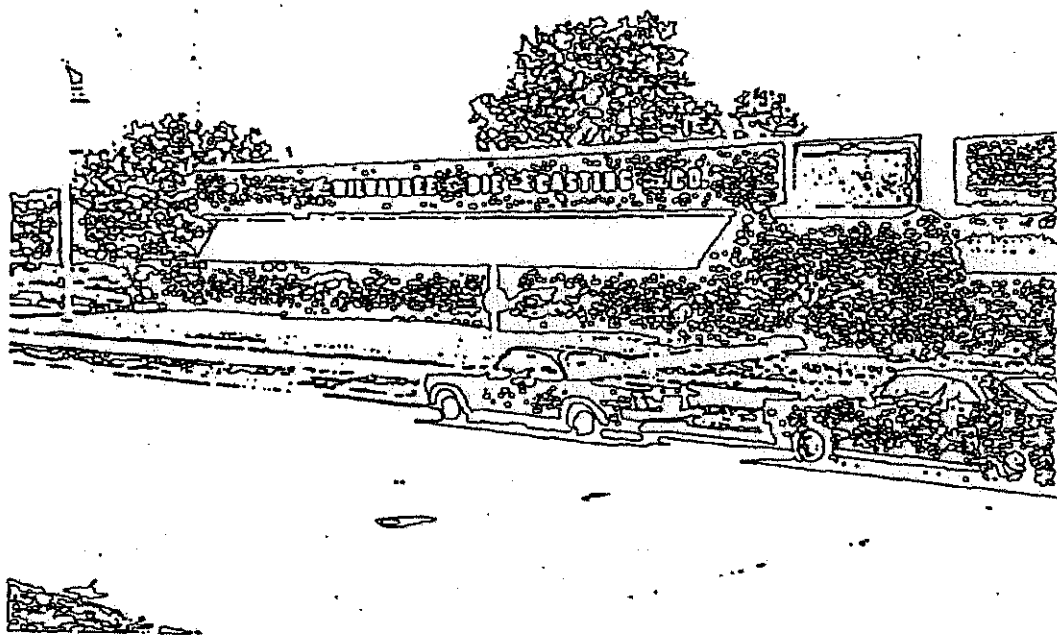
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Milwaukee Die Casting Company, Inc.



4132 N. Holton St.
Milwaukee, Wisconsin 53212

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INITIAL CONTACT DOCUMENT

SALE OF MILWAUKEE DIE CASTING COMPANY, INC.

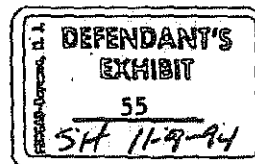
Fisher Controls Company, Inc. is offering for sale its subsidiary, Milwaukee Die Casting Company, located in Milwaukee, Wisconsin. This document has been prepared by Fisher Controls from internal information and sources believed to be reliable. No express or implied representation or warranty with respect to such information is implied.

This document is intended for your use only. Upon receipt and acceptance of this document, it should not be reproduced or used for any purpose other than as stated, nor shall it be transmitted or discussed with other persons without the prior written consent of Fisher Controls.

Fisher Controls and you shall not be committed or obligated in any way unless and until a written agreement is executed by our respective duly authorized officers pursuant and subject to approval of our respective boards of directors.

Fisher Controls Company, Inc.

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J. L. Simmons
April 12, 1983
Page Three

fact question, I believe it is essential that Fisher include a statement such as I have set forth above with its tax return in complying with the request to file on the basis of the intent of the parties. Having fully discussed the facts in its return, however, Fisher should have no further concern.

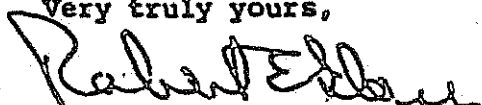
I earlier mentioned the recent legislative changes with regard to penalties. The reason for my observation is the clear underlying theory which permeates all of the new rules. The Internal Revenue Service is interested in full disclosure in the tax returns so that it can make its own determination with regard to tax liability. This is exactly what I am attempting to accomplish. The Internal Revenue Service will have the facts before it in both returns and can make its own decision as to whether it wishes to question the date of the transaction for economic and tax purposes.

I agree that effective arguments can be made on both sides of the fact issue. For this reason an inconsistent position taken by Fisher in its tax return would probably result in litigation being decided in favor of the Internal Revenue Service. The fact that Fisher filed its return inconsistently would be a fact added to the evidence which would probably tip the scale in favor of the Internal Revenue Service. I can see no reason for Fisher taking that position given the fact that all it is requested to do is file its return consistent with the buyer's return, making full disclosure of the facts.

Obtaining an outside opinion will not solve the problem. If you ask three different firms, you may get three different answers. The correct solution is to disclose all of the facts to the Internal Revenue Service and let it decide if it wishes to question the correctness of the tax returns.

If you feel that further discussion would help in reaching a decision, I suggest a prompt meeting between my clients and me and Fisher corporate, tax and legal personnel.

Very truly yours,



ROBERT E. GLASER

REG/gin

cc: George Slyman
Robert Auer

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J. L. Simmons
April 12, 1983
Page Two

7. Fisher agreed to cooperate in obtaining the tax benefits intended by the parties (Sections 9 and 12 of the agreement).

8. Fisher is being requested to cooperate by filing its tax return on the basis intended by the parties as the economic and tax consequence of the transaction.

9. Regs. Section 1.1502-78(a) requires that the claim for refund be filed by the company which left the group.

10. My advice to my client and its request to Fisher is that the returns be filed clearly setting forth the facts as they exist. The statement to be filed with the Fisher return might read:

Milwaukee Die Casting Company was eliminated from the consolidated group at December 26, 1981 as the result of a sale of all of the stock of Milwaukee Die Casting Company by parent pursuant to an agreement executed February 23, 1982 and effective as of the end of business on December 26, 1981 at which time the burdens and benefits of ownership were transferred to the buyer. Since December 26, 1981, Milwaukee Die Casting Company has been operating at a loss for Federal tax purposes. Tax returns for Milwaukee Die Casting Company for periods subsequent to December 26, 1981 will be filed by its new owner.

It is my understanding that Fisher is resisting the request to file the returns in accordance with the agreement of the parties because of disagreement concerning the answer to the fact question as to when the sale occurred for tax purposes. If a dispute arises over this fact question, the proper parties to resolve it are the Internal Revenue Service and the buyer. I suggest that Fisher should not take the position of the Internal Revenue Service on that fact question.

What is a concern of Fisher is whether it has properly filed its tax returns. The merits of the fact question as to when the sale occurred for Federal tax purposes has a bearing upon that issue. Given Fisher's apparent concern about the answer to the

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ARTER & HADDEN

IN WASHINGTON
ARTER HADDEN & HEMMENDINGER
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TELEX 98 7422
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1166 UNION COMMERCE BUILDING
CLEVELAND, OHIO 44115
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IN COLUMBUS
KNEPPER WHITE ARTER & HADDEN
180 EAST BROAD STREET, FOURTH FLOOR
COLUMBUS, OHIO 43215
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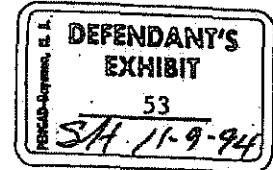
REPLY TO:

Cleveland

April 12, 1983

*DIRECT MAIL
314-694-9957*

J. L. Simmons
Director, Tax
Fisher Controls International, Inc.
7711 Bonhomme Avenue
P. O. Box 14755
St. Louis, Missouri 63178



Dear Mr. Simmons:

The following appears to be the situation:

1. The economics underlying the negotiation which led to the purchase were based upon a transfer of the business for both economic and tax purposes at the end of 1981.

2. The parties agree that the transfer was effective as of the end of 1981 and that the burdens and benefits of ownership were transferred at that date.

3. The agreement was executed on February 23 and the closing was effected on that date.

4. The question as to when a sale is consummated for tax purposes is a practical one to be decided by weighing all of the various factors, Barton Theatre Co. v. Commissioner, 83-1 USTC ¶9226; Maier v. Commissioner, 55 TC 441 (1970), modified 72-2 USTC ¶9728.

5. There is disagreement between us concerning the factual question which is whether the sale occurred for economic and tax purposes on December 26, 1981 or February 23, 1982.

6. I agree that the Service will rule on a completed transaction if the request is filed prior to the filing of a tax return reflecting the transaction, Regs. Section 601.201(b)(1) but the Service will not issue rulings on fact questions, Regs. Section 601.201(d)(2). The issue upon which we disagree is a fact question.

000720

PX-53

December 23, 1981

Dennis J. Green, Esq.
Fisher Controls International, Inc.
P.O. Box 141755
St. Louis, Missouri 63178 1475

Dear Mr. Green:

During our conversation last week when you were in London, I indicated that the land did not have to be transferred prior to the end of the year. Upon further review I note that an election will be made which will retroactively eliminate the sold corporation from your consolidated return as of December 31, 1981. This would mean that any transfer of the land subsequent to that date would not be within the protection of the consolidated return rules. For this reason the transfer from the subsidiary to the parent must be made prior to the end of the year.

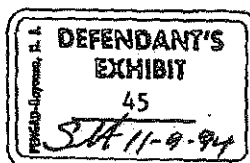
In this regard there is a question which has been raised by the Internal Revenue Service concerning gain to a corporation upon payment of a dividend with property. If the dividend is declared in the form of a dollar amount, the service has claimed that payment of that dividend in kind constitutes a sale of the property used to pay the dividend. This problem can be solved by declaring the dividend in the form of the actual property to be transferred.

Very truly yours,

Robert E. Glaser

REG/mei

000261



7

PX45

Mr. George Slyman
Page Two
December 14, 1981

Fisher. As we discussed, appropriate assurances regarding employment, benefit plan maintenance and other such employee relation matters are vital to the continued success of Milwaukee. We are prepared to join with you in explaining the transaction to the employees at an early date following approval by our Board.

As I indicated in our telephone conversation, while the matter is with our Board, we are willing to continue our negotiations with a view to reaching a definitive agreement. As we are both anxious to resolve this matter within the above time frame, we will receive your appraisers, auditors and advisers at Milwaukee and will cooperate with them in completion of their examination.

As drafts of proposed agreements are ready for our review, the most expeditious course of action is to send them directly to the attention of Dennis. In this regard, I have been involved in transactions where the proposed representations and covenants have become so extensive that the closing is delayed while the lawyers debate issues of little practical significance. I hope the drafts appropriately address this aspect in light of your desire to close effective December 31.

Needless to say, both Dennis and Jim are available for consultation by phone and the provisions of our letter dated October 15, 1981 are still in full force and effect.

Very truly yours,


S. B. Pylipow

SRP/mg

cc: Messrs.: ☒ D. J. Green
J. G. LeBloch
G. S. Marechal

MDC 000370

7711 Bonhomme Avenue
St. Louis, Missouri 63176
(314) 691-9913

3

S. R. Pylipow
Vice President
Finance and Administration

December 14, 1981

Mr. George Slyman
Chairman of the Board
Accurate Die Casting Company
3089 East 80th Street
Cleveland, Ohio, 44104

Dear Mr. Slyman:

As discussed on Friday, I reviewed with our President the terms of your proposal to simultaneously purchase, personally, the land and buildings presently owned by Milwaukee Die Casting Company (Milwaukee) and to have your children acquire the stock in such company for \$4.5 million in the aggregate in cash upon closing. He in turn has requested of our Board of Directors authority to sell Milwaukee for \$4.5 million cash.

As the tax consequences of this transaction are so important to you, I do wish to restate that while Jim LeBloch is not aware of any adverse tax consequences to you, he obviously is not aware of your personal situation and you must rely on your own tax advisers in this regard.

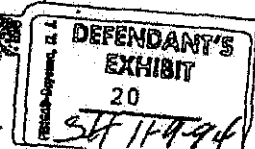
As Milwaukee is a second tier subsidiary, conveyance of the real property would be by good and sufficient special warranty deeds from Fisher Controls Company, Inc., our principal U. S. subsidiary, which holds the investment in Milwaukee Die Casting Company.

With respect to the fourth point in your proposal, I understand that this means a closing by January 30, 1982, retroactively effective to December 31, 1981 will suffice for your purposes.

Our acceptance of the Accurate Die Casting Company's offer is contingent upon the approval of our Board of Directors and the negotiation and execution of formal agreements acceptable to

Fisher Controls Corporation of Delaware

HDC 000369



DX-20

THE ACCURATE DIE CASTING CO.
3089 EAST 80TH STREET • CLEVELAND, OHIO 44104 • PHONE 216/341-8900

December 10, 1981

Mr. Stanley Pylipow
Fisher Controls
7711 Bonhomme Avenue
St. Louis, Missouri 63178

Dear Mr. Pylipov:

On December 8, 1981, we discussed a proposed sale by you of all of the stock and assets of Milwaukee Die Casting (Milwaukee). It is my understanding that Milwaukee is a wholly owned second tier subsidiary of your company, filing consolidated federal income tax returns with your company.

Preliminary review by my attorney and Jim LeBloch indicates that the proposal which we discussed on December 8th can be implemented without adverse tax consequences to the seller or the buyer.

The general outline of the proposed agreement is as follows:

1. The total purchase price will be \$4.5 million payable in cash upon the closing pursuant to a stock purchase agreement and a real estate purchase agreement containing the usual representations, warranties and protections for each of the parties;
2. Your company will arrange to acquire title to the real property which will be sold in one transaction;
3. The stock of Milwaukee will be sold in a separate transaction; and
4. The closing will be effective December 31, 1981 at the close of business.

If the above is an accurate description of our discussions to date and you are willing to continue negotiations, please advise and I will arrange to have drafts of proposed agreements prepared.

Very truly yours,

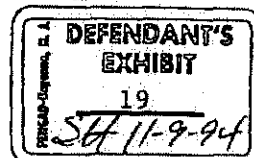
THE ACCURATE DIE CASTING COMPANY

George J. Slyman
George J. Slyman
Chairman of the Board

GJS:ed

MD001059

ALUMINUM • BRASS • ZINC • MAGNESIUM BASE ALLOYS • SINCE 1943



DX-19

Re - Visit to Milwaukee
Die Casting Company

- 4 -

November 20, 1981

Based on this purchase amount, I believe we could recover our purchase price in at least ten years and if operated efficiently it would or could be sooner than this.

Respectfully,

R. E. Auer

REA:ed

MD000990

Re- Visit to Milwaukee
Die Casting Company

- 3 -

November 20, 1981

an item in the purchase agreement should cover continuance of this relationship of sales with Fisher. The customer base seems very small in relation to our operations, due mainly I believe to the lack of a sales force. This should be worked on immediately.

Employees seem very knowledgeable about their respective areas of duties as well as the company and business. They have approximately 95 employees with 25 being in the exempt and non-exempt area. Effective 11/23/81 approximately 15-16 more employees will be laid off. Their highest employment level was around 180 to 190 which occurred in 1980. Their compensation is above average for our industry, but I believe it has been warranted based on their profit generated.

Equipment - overall their equipment is relatively new in comparison to ours and looks to have been maintained in very good condition. The company has spent an average of \$311,000 per year for capital equipment.

Accounting - their accounting staff is limited, but have a financial manager that is very knowledgeable. They use an IBM-System 32 (leased) and their cost accounting is process costs, using standard cost basis. They cannot generate actual cost per job as is but do have standard cost per job. They lost their programmer about one year ago and rely on outside services in this area. Not everything is documented. This could be corrected along with our anticipated changes in our data processing area.

In summary, I believe this operation would be a very good addition for our operation and feel if it could be purchased in the are of \$3.5 to \$4.5 million we would benefit greatly from it.

MD000989

Re - Visit to Milwaukee
Die Casting Company

- 2 -

November 20, 1981

Stock	\$	1
Capital in excess of par.		<u>2,038</u>
		\$2,039
Retained earnings - Beg..	\$3,059	
Dividend	<u>2,300</u>	
	\$ 759	
Current Earnings	<u>366</u>	<u>1,125</u>
Net Worth		<u>\$3,164</u>

Cash on hand has been depleted by this dividend but there still is approximately \$595,000 on hand at 10/24/81 with an estimate of \$750,000 to \$800,000 at the year end. Trade payables and accruals amount to approximately \$561,000 with no known unrecorded items, except a provision to be made in November of \$60,000 for disposal of PCB Chemical on hand. This is at \$500 per barrel to have it burned.

The equipment has been inspected for contamination from the PCB Chemicals and will have a final one done in December. If we should acquire this Company, one of the covenants should cover all liabilities in regards to this PCB problem i.e. hold us harmless from any & all possible existing or future liability that may arise from this.

Trade receivable amount to approximately \$710,000 of which approximately \$141,000 is due from Fisher Control, and they are in a fairly good current condition. One point I would like to bring out at this time is that I don't know if sales to Fisher has been in anyway made at inflated amounts. This, of course, if done, would obviously make the profitability of this company look exceedingly good. This most likely wasn't done, but it should be checked out very carefully since they account for 30 to 40% of this company's sales. Also

ML000988

S. SLYMAN

REPORT RE - VISIT TO MILWAUKEE DIE CASTING COMPANY

ON NOVEMBER 17 & 18, 1981

This company, I believe, is a very well maintained and run operation. It has been a very profitable and good cash generating operation.

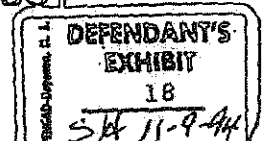
During the six plus years that Fisher has owned this operation, only records available to us, it has averaged an annual sale volume of \$6,780,000 with its highest sales reaching \$8,709,000 in 1980 and the lowest volume being in the first year of ownership of \$3,969,000. The company has generated during this period the following:

	Average Operations Through 12/31/80		Ten Months Ended 10/24/81	
Sales	\$6,786	100.0%	\$5,932	100.0%
C/S	5,265	77.6	4,325	79.7
G. M.	\$1,521	22.4%	\$1,207	20.3%
S. G. & A.	571	8.4	517	8.7
Income Before Taxes	\$ 950	14.0%	\$ 690	11.6%
Net Income	\$ 508	7.5%	\$ 326	6.2%

The company expects its November, 1981 operations to be very profitable, due mainly to its physical inventory adjustment being recorded in this month which amounts to approximately \$185,000 pick-up. December is expected to be their worst month since ownership. They will be closed one week in November and possibly two weeks in December. Anticipated sales for year 1981 around 6.5 to 6.7 million and profit before taxes at around 10 to 11% of sales.

The net book value of this company at the end of last year was \$5,098,000 but in September of 1981 they declared a cash dividend and paid \$2,300,000 to the parent. The current book value as of October 24, 1981 is as follows:

MD000987



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18

**MILWAUKEE DIE CASTING COMPANY, INC.
ADDITIONAL INTERIOR SAMPLING
AND INTERIOR CLEANUP STRATEGY AND COST ESTIMATE REPORT**

EXECUTIVE SUMMARY

On June 19, 1992, Milwaukee Die Casting Company, Inc., (MDC) retained RUST Environment & Infrastructure (formerly SEC Donohue, Inc.) to prepare a Sampling and Analysis Work Plan and to conduct a sampling and analysis program for the MDC facility located in Milwaukee, Wisconsin. The purpose of the sampling and analysis was to develop information regarding the extent and degree of contamination at the facility. Although the primary concern was PCB contamination, analysis for other contaminants (volatile and semi-volatile organics, metals, and cyanide) was performed on selected samples to account for the oils, TCE, and cyanide used at this site.

Approximately 80 samples were collected at MDC during the period of July 9, 1992, through July 16, 1992. Analytical results indicate widespread PCB distribution throughout the inside of the building (including the tunnels and sewers). PCB levels vary from nondetect levels to the percentage range. Cyanide was detected in the Tool Room wood floor sample at 197 mg/kg. Volatile organics (chlorinated and nonchlorinated) and semi-volatile organics were detected in two sewer sludge samples. Metals were detected in the two sewer sludge samples at levels that indicate the potential for exhibiting a characteristic of RCRA hazardous waste. Following a review of this information, it was determined that additional sampling and analysis was necessary to develop remedial action alternatives and cost estimates.

As verbally requested by MDC, RUST Environment & Infrastructure (RUST E&I) submitted a proposal dated September 25, 1992, for additional sampling of the interior of the building and preparation of a strategy and cost estimate for the cleanup of the interior of the building. The additional sampling was performed on January 12, 1993, and consisted of obtaining six cores of the concrete floor and two liquid samples from the Die Cast Department wastewater storage tank.

The six core sample results indicate PCB contamination at depth in the floor of the east half of the MDC building and primarily surficial contamination of the floor in the majority of the west half of the building. The two liquid sample results verified the presence of PCB in the liquid stored in the Die Cast Department wastewater storage tank.

This document presents two cleanup strategies and cost estimates for the interior of the building. As requested by MDC, one attempts to minimize cleanup costs while the other attempts to minimize the amount of residual PCB remaining on-site. Surface cleaning all porous (concrete and concrete block) and impervious (metal and glass) surfaces and sealing porous surfaces comprise the primary components of the minimal cost alternative. Surface

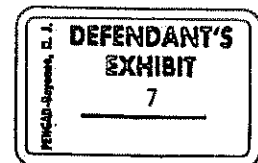
REV 13 504

**ADDITIONAL INTERIOR SAMPLING
AND INTERIOR CLEANUP STRATEGY AND
COST ESTIMATE REPORT**

**Milwaukee Die Casting Company, Inc.
Milwaukee, Wisconsin
March 1993**

**RUST Environment & Infrastructure
4738 North 40th Street
Sheboygan, WI 53083**

Project No. 19916



DX-7

1 ambient air samples in the plant were in
2 compliance with OSHA standards?

3 A Yes, and noise.

4 Q And they checked the noise levels to be sure
5 they complied with OSHA standards?

6 A For environmental, but they also did safety
7 walkthroughs.

8 Q They also did safety walkthroughs?

9 A Yeah.

10 Q Before Milwaukee Die Casting Company, before
11 their stock was acquired by Fisher, did
12 Milwaukee Die Casting Company hire outside
13 consultants to do that work?

14 A The insurance company did.

15 Q Insurance company did that work?

16 A Yeah.

17 Q Did Milwaukee Die Casting ever have qualified
18 personnel who were able to do the air samples
19 that you described?

20 A No.

21 Q Did Milwaukee Die Casting Company ever have the
22 qualified personnel to do the noise sampling
23 that you described?

24 A No.

25 Q So somebody other than an employee of the

1 looked at the contract, and this was signed by
2 the president --

3 A Right.

4 Q -- of Milwaukee Die Casting Company?

5 A Oh, no. It was signed by --

6 Q Mr. Solly?

7 A Oh, Solly, yeah.

8 Q And he signed it as the president and director
9 of Milwaukee Die Casting Company?

10 A But he was never here. He was never in
11 Milwaukee.

12 Q But he was the president of Milwaukee Die
13 Casting Company?

14 A Evidently. I didn't know that, though.

15 Q Wasn't signed by Monsanto, was it?

16 A I don't remember what it said.

17 MR. CARUSO: I'll stipulate to who
18 it's signed by. It's signed by Mr. Solly.

19 THE WITNESS: When I seen Solly on
20 there, I was amazed, but --

21 BY MR. RUNNING:

22 Q I just want to be clear, though. The only
23 involvement that Monsanto had in the operations
24 of the plant from an environmental standpoint
25 was they took air samples to make sure that

- 1 Q Okay. I just want to be clear on this. Who
2 prepared your permit applications, for example,
3 for your WPDS permit?
4 A Donohue.
5 Q Okay. Now, did Monsanto arrange for Donohue to
6 do that work --
7 A No.
8 Q -- or did you arrange for this?
9 A I did.
10 Q When inspectors would come to the plant, who
11 would talk to them?
12 A I would.
13 Q Did you have any other permits to operate the
14 plant, other than your Wisconsin -- your
15 Wisconsin pollutant discharge elimination system
16 permit, otherwise known as WPDS?
17 A Yeah. I don't think of any others.
18 Q Okay. Are you aware of any permit application
19 for the plant that Monsanto filled out instead
20 of Milwaukee Die Casting?
21 A No.
22 Q So just to be clear, the only involvement that
23 Monsanto had --
24 A Except the burning of that stuff, that's all.
25 Q All right. And for that, isn't it true we've

1 spend too much money on this stuff, and then
2 that one day Dennis Blanchard caught up with
3 him, and that was the end of that, and he says,
4 I will no longer --

5 Q Right --

6 A -- I don't want no part of this no more. You
7 take care of it. And at that time I said to
8 him, if I'm taking care of it, I'm going to have
9 no limits. He said, whatever it takes, do it.

10 Q And then did he advise Fisher or Mr. Blanchard
11 that you were spending the money in these areas?

12 A I don't know what John did. John probably wrote
13 him back and told him this was going to be taken
14 care of now, you know. I don't know exactly
15 what John said to him.

16 (A brief recess was taken.)

17 BY MR. CARUSO:

18 Q You saw some documents in the first part of your
19 deposition with Mr. Running concerning the 1975
20 complaint from the Wisconsin Regulators about
21 the sewer; do you remember that?

22 A Yes, yes.

23 Q And your testimony is that the problem was
24 solved by sealing the sewer, right?

25 A Right. That's what we did.

1 it was very nasty.

2 Q What was the subject of that --

3 A It was a safety report from the insurance
4 company which went -- A copy went to us and one
5 went to Fisher.

6 Q Could you give me an example of a specific
7 situation where Mr. Wheeler's prior decision not
8 to spend the money was reversed by Fisher, and
9 the money was spent and the safety was improved?

10 A Well, after he got that letter from Dennis
11 Blanchard, he took the thing and he gave it to
12 me, and he said I want no more part of it. You
13 do what you have to do, and I don't want to see
14 the stuff anywhere.

15 Q Could you state for the court reporter what
16 exhibit you were looking at?

17 A This isn't one. This was from the service
18 company, but it looked like this.

19 Q Could you give me an example of a specific
20 safety habit, whether it was a guard or anything
21 else, that Fisher overruled Mr. Wheeler and
22 directed --

23 A Fisher never overruled. I mean they just told
24 him what to do. He was the guy that said no.
25 And for a long time, he just kept trying not to

1 to --

2 Q Can you give me an example of a project that he
3 cancelled or vetoed?

4 A Well, there was guards for the presses, which
5 were expensive, but he didn't think we needed
6 them at this time. And there was a lot of
7 things like that, like die casting machines, it
8 was part of the OSHA to put guards on the
9 machines. And at that time he passed on all
10 this stuff, you know, anything you spent any
11 money on in safety -- in the safety business.

12 Q And did there come a time when Mr. Wheeler's
13 decision was reversed --

14 A Yes.

15 Q -- and those items were adopted or implemented?

16 A Yes.

17 Q And that's because Fisher or Monsanto
18 intervened?

19 A Fisher did. Dennis Blanchard. He's -- Dennis
20 Blanchard is the guy that got one of these
21 reports that you had here, got this stuff, only
22 it was from the insurance company. And in the
23 margin here he wrote, get your ass in gear and
24 don't screw around with this any longer, this is
25 long enough, what the hell are you doing? And

1 Q The tools the --

2 A I never talked to Fisher about any capital
3 improvements or things like that.

4 Q Do you have any recollection of the subjects
5 that you talked to Fisher about?

6 A Parts, design, tooling. That was my forte.
7 That's --

8 Q Okay.

9 A I was -- Actually called on Fisher to sell them
10 jobs. And not so much in Marshalltown. Mostly
11 McKinley. McKinney was the billing customer for
12 Milwaukee Die Casting.

13 Q Did Fisher get competitive quotes on its parts?

14 A Yes.

15 Q Did Fisher get better lead time than other
16 customers of Milwaukee Die?

17 A I can't say they did. But they complained about
18 it, that some other customers got better lead
19 time than them, so they were not put on the
20 totem pole in any way.

21 Q Did you have conversations from time to time
22 with engineers at Fisher?

23 A Yes.

24 Q And that's when you talked about parts and
25 tooling?

1 bought the stuff and never used it, except the
2 sound meter I used. But I wasn't smart enough
3 to understand the rest of it. So that's why
4 Monsanto came out and did it. They also did the
5 noise, too. Even though I spent four days, I
6 told them I don't understand it, you come out
7 and do it.

8 Q Now, you gave some testimony, I won't try and
9 restate it all, but if I understood it, the
10 substance of your testimony was that while
11 Fisher was the owner of the stock of Milwaukee
12 Die Casting Company, that whatever was needed in
13 terms of capital improvements was provided?

14 A Correct.

15 Q Is that a fair summary of what you said?

16 A Let me say John Wheeler told me, he says
17 anything you want, I'll buy it.

18 Q And he was referring to Fisher?

19 A Yeah. And it's true, they did.

20 Q So it was Fisher that decided the level of
21 capital items that could be purchased?

22 MR. RUNNING: Objection. Lack of
23 foundation. Lack of personal knowledge.
24 Mischaracterizes the witness's testimony.

25 THE WITNESS: I don't know. All I

1 Q When you say writing, you're going to the last
2 two pages?

3 A The last -- Yeah. That's all Maynard
4 Preubich's.

5 Q That's all Maynard's handwriting?

6 A Yeah.

7 Q And the typed pages, who do you think is
8 responsible for preparing those typed pages?

9 A What does it say? What does it say? Oh, it
10 doesn't. I guess there's nobody's signature on
11 it. More than likely, this was given to
12 Maynard, Maynard gave it to the secretary, and
13 the secretary typed it, and --

14 Q Did you see it before it went back to Fisher?

15 A Probably not. But I notice that when I look at
16 it now, the things I see in there, like the
17 Shamrock guns and the Liberty air samples, yes,
18 that's all true, because I bought them.

19 Q What was the purpose of the Shamrock Engineering
20 spray guns?

21 A That was to reduce noise in the die cast.

22 Q What is the purpose of the metrosonic DB306
23 metrologger (phonetic) --

24 A That was to take sound readings. And the other
25 thing was a calibration to get air samples. We

- 1 A Right --
- 2 Q -- Safety and Health Act compliance?
- 3 A That's basically why I was there, to comply with
- 4 OSHA regulations.
- 5 Q So is it fair to say that you went to Monsanto
- 6 for training on OSHA compliance?
- 7 A Well, in a long way, yeah. But basically it was
- 8 certain items; to learn how to take air samples
- 9 and how to read them or how to take noise and
- 10 how to read it and --
- 11 Q And how long were you at Monsanto?
- 12 A I think four days.
- 13 Q And who arranged for your visit to Monsanto?
- 14 A Don't know.
- 15 Q Who told --
- 16 A Don't know.
- 17 Q Well, how -- Did somebody from Monsanto --
- 18 A Well, Wheeler must have told me, you know, you
- 19 got to go, and they want you to do that, and
- 20 ta-da. So okay, so I went.
- 21 Q Now, prior to Fisher's acquisition of the common
- 22 stock, in all the years that Milwaukee Die had
- 23 been buying hydraulic fluids from Monsanto --
- 24 A Um-hum.
- 25 Q -- had Monsanto ever provided assistance to

1 anybody at Fisher to get the approval?

2 A I don't know.

3 Q You just don't know one way or the other?

4 A No. He's my boss, and he says yes or no.

5 Q Was there an occasion when you went to the
6 Monsanto plant in St. Louis, Missouri?

7 A Yes.

8 Q When was that?

9 MR. RUNNING: Objection to the
10 vague reference to the Monsanto plant.

11 MR. CARUSO: Well, Monsanto, the
12 offices. And we'll have him describe what it
13 was he did and what he saw while he was there.

14 MR. RUNNING: All right.

15 THE WITNESS: You know, I don't
16 know the date, but it was obviously sometime
17 around '77, '78, someplace in there, because
18 Fisher first owned us in '75, so -- And what I
19 went there for was to learn to, you know, take
20 air samples and noise samples.

21 BY MR. CARUSO:

22 Q Now, you gave some testimony in your deposition
23 about OSHA compliance?

24 A Yes.

25 Q That is the Occupational --

1 Q -- visited McKinney (phonetic) in Sherman,
2 Texas, and also been involved in Marshalltown,
3 Iowa.

4 A Right.

5 Q Did he ever visit the Milwaukee Die Casting
6 plant?

7 A Not to my knowledge.

8 Q Did anyone from Fisher Controls supervise
9 regulatory compliance at the Milwaukee Die
10 Casting plant?

11 A No. Nobody from Fisher had anything to do with
12 this project.

13 Q Okay. This project -- And then you were
14 pointing to the PCB control form?

15 A Right. Everything that took place in trying to
16 clean up those PCBs and getting them below 50
17 parts per million, I don't recall anything from
18 Fisher. Now, we did get a little help from
19 Monsanto.

20 Q Are you referring to Mr. Craddock providing you
21 the regulations?

22 A Craddock and -- Well, I did talk to some people
23 there in Phocian Park I remember talking to, and
24 I don't remember what this was about, but I did
25 talk to more people at Monsanto than I did

1 take the water-glycol out of the machine and let
2 it sit and you skim off the top, you would --
3 could put that water-glycol back in again and
4 re -- significantly reduce the number of PCBs in
5 the machine. And if you kept that up, you could
6 get it down to where it belongs.

7 Like some of the machines here,
8 they're getting down, and some are still up. I
9 imagine here the ones that are still up, they've
10 not been taken care of yet.

11 Q Hadn't been flushed yet?

12 A No.

13 Q Who decided to hire Donohue to do this testing?

14 A I did.

15 Q Did you make all the decisions concerning the
16 clean-up procedures and who to hire and et
17 cetera?

18 A Yeah. I would guess on this here project, that
19 was mine, yeah. We had done work with Donohue
20 previously. It's not like they were somebody
21 new.

22 Q Then the next exhibit you should have in front
23 of you is Exhibit 67?

24 A That's -- I see John Costello's name. He must
25 have been trying to -- Yeah. This too, yeah.

1 Q Okay. Were these PCB control procedures
2 followed during the cleanup?

3 A Absolutely. That's -- Well, there isn't much
4 there, really. It's just telling you how to
5 store those drums and what to mark on them and
6 how to record it. That's -- And how to
7 document it.

8 Q One last question. Did you prepare this control
9 procedure yourself?

10 A Yes. Well, somebody typed it. I don't know how
11 to type.

12 (Exhibit Number 66 was marked.)

13 BY MR. RUNNING:

14 Q The next exhibit that the court reporter marked
15 is marked as Exhibit 66, dated September -- the
16 first page is September 24, 1980?

17 A Um-hum.

18 Q The second page is another letter dated
19 September 22nd, 1980. The third page is a test
20 result sheet dated September 18, 1980, and the
21 third page appears to be an attachment to the
22 second page. And both letters are addressed to
23 you?

24 A Um-hum.

25 Q Did you receive these letters at or about the

1 A 65.

2 Q 65.

3 (Exhibit Number 65 was marked.)

4 BY MR. RUNNING:

5 Q Mr. Suess, the court reporter has marked as
6 Exhibit 65 a September 10, 1980, Milwaukee Die
7 Casting memorandum entitled PCB control
8 procedure.

9 A Um-hum.

10 Q Did you prepare this?

11 A Yes.

12 Q And are these the written instructions that were
13 to be followed in --

14 A Yeah.

15 Q -- in cleaning up the machinery?

16 A Yeah, yeah. Well, this is it, isn't it? I did
17 see on here, though, that the following
18 information is being recorded and given to
19 myself or Maynard Preubich (phonetic), so it
20 looks like both of us were sort of working on
21 the recording of it.

22 Q What was Maynard Preubich's position in 1980?

23 A Industrial engineer. And he worked under me.

24 Q Do you know where he is now?

25 A Last I know, he's at home on the south side.

1 Q Was this a record that was prepared and
2 maintained --

3 A Right from the front of --

4 Q -- by you in the ordinary course of your duties?

5 A Yeah.

6 Q And as you --

7 A Actually, this whole cleanup was run by two
8 guys, and it was Bob Kostuch and Ken Worzalla.
9 They did all the work. They gave me all the
10 information, I had the information typed in.
11 They gave me all the samples. I sent the
12 samples out to the lab. The lab would then
13 report what the findings were. I would record
14 it or have it recorded.

15 Q What was Bob Kostuch's position at the time?

16 A Maintenance man.

17 Q Do you know where he is now?

18 A Right at the plant.

19 Q Still works there?

20 A And so does Ken Worzalla.

21 Q And what was Ken Worzalla's position at the
22 time?

23 A Same thing, just a maintenance man. I think Ken
24 right now is -- I think he's in charge of
25 maintenance, but I'm not sure. Do you know?

1 guarantee.

2 Q Okay.

3 A And I think the monies and so were -- Marshall
4 and -- No, not Marshall Ilsley, but the bank on
5 Wisconsin Avenue, right by the river.

6 Q Okay.

7 A I can't think of the name of it.

8 Q Okay. Was the Milwaukee Die Casting pension
9 plan, if you will, was it maintained separately
10 from that of Fisher Controls?

11 A Yes.

12 Q Yeah.

13 A It was no part of that.

14 Q Do you remember anything else about Mr. Boyd's
15 visits to the plant, other than what you've told
16 me already?

17 A No, not --

18 Q Did you ever receive any written instructions
19 from Mr. Boyd --

20 A No.

21 Q -- about how to run the plant?

22 A No.

23 Q Referring to Exhibit 12, which the court
24 reporter's already marked, which is the July 17,
25 1975 --

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING COMPANY,
SLYMAN INDUSTRIES, INC., and
THERESA A. SLYMAN,

Plaintiffs,

vs.

FISHER CONTROLS INTERNATIONAL,
INC.,

Defendant.

DEPOSITION of EARL L. SUESS, taken at the
instance of the Defendant under and pursuant to the
Federal Rules of Civil Procedure and the acts amended,
and pursuant to notice, before me, MICHELLE JEAN
CONOVER, Registered Professional Reporter and Notary
Public in and for the State of Wisconsin, at the law
offices of GODFREY & KAHN, 780 North Water Street,
Milwaukee, Wisconsin, on the 16th day of December, 1994,
commencing at 10:00 o'clock in the forenoon.

SUESS DEP.

1 release of PCB'S onto the premises?

2 A No, I have only been in the building one time,
3 in the factory.

4 Q And I take it you have no knowledge of Fisher's
5 "failure and/or refusal" to remedy its release
6 of PCB's into the environment on the premises?

7 A No.

8 Q I take it you have no knowledge of the costs
9 incurred in responding to Fisher's release of
10 PCB's onto the environment or the premises?

11 A No.

12 Q I take it you have no knowledge of Fisher's
13 performance of its obligations under Section 14
14 of the purchase agreement dated February 23,
15 1982?

16 A I have no knowledge of that, either.

17 Q Okay. Do you have any knowledge that is
18 relevant to the subject matter of this action
19 that you haven't told us about?

20 A No, I'm sorry, I don't. I can't help anybody.
21 I'm just a mom.

22 MR. ASH: I think you can maybe.

23 MR. RUNNING: I'd like to make one
24 comment on the record, since I don't have a
25 cover letter to give Carmen. I am handing him

1 A I don't have any.

2 Q What knowledge do you have of the costs that
3 will have to be incurred to remedy what you
4 contend to be a PCB problem at the MDC plant?

5 A I don't know what it would cost. I have no
6 idea.

7 Q Okay. I'm going to quote your attorney's words
8 on another topic here. What knowledge, if any,
9 do you have with respect, to I'm going to use
10 your attorney's words now, the plaintiffs'
11 discovery of the truth regarding the remaining
12 PCB contamination on the premises?

13 A You have to say that over again.

14 Q What knowledge, if any, do you have about the
15 plaintiffs', that's you and your husband and
16 your family and their companies, what knowledge
17 do you have with respect to the plaintiffs'
18 discovery of the truth regarding the remaining
19 PCB contamination on the premises?

20 A I don't have any knowledge of what all this is.

21 Q I take it you have no knowledge of the
22 condition of the premises while it was owned by
23 Fisher?

24 A No.

25 Q And you have no knowledge of Fisher's alleged

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING COMPANY,
SLYMAN INDUSTRIES, INC., and
THERESA A. SLYMAN,
Plaintiffs,

vs. Case No. 93-C-0325

FISHER CONTROLS INTERNATIONAL,
INC.,
Defendant.

DEPOSITION OF THERESA A.

SLYMAN, was taken at the instance of the
Defendant, under and pursuant to the
provisions of Section 804.05 of the Wisconsin
Statutes, and the acts amendatory thereof and
supplementary thereto, before me KATHY A.
HALMA, Registered Professional Reporter and
Notary Public in and for the State of
Wisconsin, at the law offices of Godfrey &
Kahn, 780 North Water Street, Milwaukee,
Wisconsin, on the 15th day of December, 1994,
commencing at 5:50 o'clock in the evening.

1

T. SLYMAN DEP.

- 1 A No. It's in the same -- in an attached
2 building, but a different building.
3 Q And the building isn't in proximity to your
4 residence, is it?
5 A About five miles, seven miles.
6 Q How many people are employed by Slyman
7 Industries in Medina, Ohio?
8 A I'm not sure.
9 Q Is anyone employed on a full-time basis there?
10 A I don't know.
11 Q Can you name any of the officers of Slyman
12 Industries other than Peter?
13 A I don't know of any other officers.
14 Q And you have already testified you don't know
15 who the directors are?
16 A I don't, no.
17 Q What are the physical assets of R. O. Schulz
18 Company?
19 A Pardon?
20 Q What are the physical assets of R. O. Schulz
21 Company? You said it was one of the
22 wholly-owned subsidiaries of Slyman
23 Industries.
24 A What are you talking about by the "physical
25 assets?"

1 time?

2 A They used to be at least quarterly and at one
3 time monthly over the years.

4 Q Were minutes of meetings maintained?

5 A Yes.

6 Q And who has possession of those minutes?

7 A They're in our corporate office. I don't know
8 whether Jim Richter has them or who has actual
9 possession of them.

10 Q Where are the corporate offices of Slyman
11 Industries maintained?

12 A There's a corporate office in Medina and there
13 is also a corporate office in Chicago at
14 Schulz, and I don't know exactly where the
15 books and records of Slyman are kept, whether
16 they're at Medina or Schulz.

17 Q Is it an office building in Medina where its
18 corporate offices are located?

19 A Yes.

20 Q Is there any other occupant of that space?

21 A Other than Slyman Industries?

22 Q Yes.

23 A No.

24 Q For example, does Permold share the same office
25 space?

- 1 Q Could you describe those loans?
- 2 A I don't recall. It's been a long time. I know
- 3 at one time or another I had loans from them.
- 4 Q Do you remember the aggregate amount of those
- 5 loans?
- 6 A No.
- 7 Q Can you tell me with any degree of precision
- 8 what the amount of those loans was?
- 9 A No.
- 10 Q Can you recall a loan in excess of \$300,000?
- 11 A No. I'm not saying I don't have it.
- 12 Q To your knowledge, has Milwaukee Die Casting
- 13 ever paid any dividends to Slyman Industries?
- 14 A They may have. I don't recall.
- 15 Q Who would know that?
- 16 A We can go through the books and records. Our
- 17 accountants would.
- 18 Q Who is the treasurer of Slyman Industries?
- 19 A I don't recall.
- 20 Q How often does the board of directors of Slyman
- 21 Industries meet?
- 22 A To date?
- 23 Q Yes.
- 24 A I don't recall.
- 25 Q Do you recall the frequency of meetings at any

1 the voting shares through the trust other than
2 George the III?

3 A I don't recall.

4 Q Who set up this trust arrangement?

5 A I believe our attorney, Tom Espere.

6 Q Which firm is he with or is he in-house?

7 A No, he's with Novy, Salem, Espere (phonetic).

8 There is seven or eight of them. He's in
9 Cleveland.

10 Q Have you ever received any salary from
11 Milwaukee Die Casting?

12 A I don't believe so.

13 Q Have you ever received any consulting fees from
14 Milwaukee Die Casting?

15 A I don't believe so.

16 Q Have you ever received any other form of
17 compensation of any type from Milwaukee Die
18 Casting?

19 A I don't believe so.

20 Q Have you received any dividends from Milwaukee
21 Die Casting?

22 A No.

23 Q Have you received any loans from Milwaukee Die
24 Casting?

25 A I believe I have, yes.

- 1 A I believe my son, George.
- 2 Q George the III?
- 3 A Right.
- 4 Q Do you exert any controlling influence either
- 5 through the trust or otherwise?
- 6 A You're talking about today?
- 7 Q Let's first deal with today.
- 8 A Yes. No, I don't.
- 9 Q What about prior to today? Did you observe any
- 10 control through the trust or otherwise?
- 11 A At one time I was chairman of the board.
- 12 Q But as chairman of the board did you have -- I
- 13 guess what I'm asking is did you have any
- 14 authority to control the voting shares as you
- 15 termed them of the company either through the
- 16 trust or otherwise?
- 17 A I have never controlled the trust, so I have
- 18 never had control of the shares. So when the
- 19 trust was put in effect, I don't recall what
- 20 year, I have had no control, if that's the
- 21 question you're asking.
- 22 Q Has George the III always been the sole trustee
- 23 of the trust?
- 24 A I don't recall.
- 25 Q Do you recall anyone else exercising control of

1 correct?

2 A I believe that's correct.

3 Q Prior to February 23, 1982, was the
4 distribution of the common shares of Slyman
5 Industries as you have just indicated or was
6 there a different distribution?

7 A As far as I recall, there was only one
8 distribution and it was done at that time and
9 it's always been the same. The distribution of
10 the shares has never changed, to my knowledge.

11 Q Is there any legal agreement in place that
12 affects the control of Slyman Industries such
13 that you or your wife would have control over
14 the affairs of the company, even though you
15 don't have majority interest in the shares?

16 A There's a trust that has the voting shares, and
17 I don't recall what year that was put into
18 effect, but there's a trust that controls the
19 voting shares and my wife and I -- I believe we
20 have all the voting shares, but ours are in a
21 trust.

22 Q So all voting shares in Slyman Industries are
23 controlled by a trust?

24 A Yes.

25 Q Who is the trustee?

1 A Slyman. They're all Slyman.

2 Q Is Annmarie Slyman, what is her percentage
3 ownership of Slyman Industries?

4 A 24 and one-half percent.

5 Q Greg Slyman, what is his percentage?

6 A 24 and one-half percent.

7 Q I'm detecting a pattern. And if I were to
8 guess that Peter Slyman had 24 and one-half --

9 A You would be 100-percent right. Terry and I
10 have one percent each, my wife.

11 Q How long has this distribution of the common
12 stock of Slyman Industries been in effect?

13 A Since the inception. Sometime in late-'81.

14 Q What was the name of Slyman Industries -- What
15 was the prior name of Slyman Industries?

16 A I don't recall.

17 Q As you recall, you were at Mr. Glaser's
18 deposition and he testified that it was a
19 holding company that had -- for whose shares
20 had not yet been issued but it wasn't in
21 existence before the end of 1981.

22 A It was Pentigo Gas or something like that. I
23 don't recall.

24 Q Then its name was changed sometime prior to
25 February 23, 1982 to Slyman Industries; is that

1 Q What are the names of your four children in
2 addition to Peter and Greg?

3 A George.

4 Q Is that George the III?

5 A George J. the III, right, and Annmarie. That's
6 one word.

7 Q Is George J. the III Slyman involved in the
8 business of Milwaukee Die Casting Company?

9 A The day-to-day operation of it? Is that what
10 you mean?

11 Q I'm sorry?

12 A The day-to-day operation of the company? Is
13 that what you're asking?

14 Q In any respect, either day-to-day or some other
15 basis.

16 A He may be involved through the board. I'm not
17 sure.

18 Q He may be on the board of directors?

19 A He may be. I don't know who the board of
20 directors are right now.

21 Q What percentage of the common shares of Slyman
22 Industries does George the III own?

23 A 24 and one-half percent.

24 Q 24 and one-half percent. And is Annmarie --
25 what's her last name?

1 last name?

2 MR. GREG SLYMAN: Healy.

3 THE WITNESS: Dan Healy. I believe
4 he is. I'm not sure.

5 BY MR. RUNNING:

6 Q And he's the general manager, you said?

7 A Yes, I believe he is.

8 Q Who are the current members of the board or
9 directors of Milwaukee Die Casting Company?

10 A I can't tell you. I don't know.

11 Q Are you one of them?

12 A No.

13 Q Any of your family members on the board of
14 directors?

15 A I imagine they are.

16 Q Does your family own a controlling interest in
17 Milwaukee Die Casting Company?

18 A They own Slyman Industries which has a
19 controlling interest in Milwaukee Die Casting
20 Company, yes.

21 Q Does Slyman Industries own all the stock of
22 Milwaukee Die Casting Company?

23 A I believe so.

24 Q Who owns the common stock of Slyman Industries?

25 A My four children, myself and my wife.

1 understand you understood it and you were able
2 to give a full and complete answer. That's
3 agreeable?

4 A That's agreeable.

5 Q What is your current residential address, Mr.
6 Slyman?

7 A [REDACTED]
8 [REDACTED]

9 Q Do you hold any business titles or positions?

10 A Presently, no, I don't.

11 Q Presently no. What was the business title or
12 position that you held?

13 A Chairman of the board of Slyman Industries.

14 Q When did your affiliation with Slyman
15 Industries end?

16 A I stepped down as chairman in August of 1992.

17 Q Is Slyman Industries still in existence?

18 A Yes, it is.

19 Q Who's the current chairman of the board?

20 A Peter Slyman, my son.

21 Q Is Peter with us today or is this Greg?

22 A This is Greg.

23 Q I'm sorry. Peter is chairman. What's his full
24 name?

25 A Peter J. Slyman.

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING COMPANY,

SLYMAN INDUSTRIES, INC., and

THERESA A. SLYMAN,

Plaintiffs,

vs.

Case No. 93-C-0325

FISHER CONTROLS INTERNATIONAL,

INC.,

Defendant.

DEPOSITION OF GEORGE J. SLYMAN

and GREGORY SLYMAN, was taken at the instance of the Defendant, under and pursuant to the provisions of Section 804.05 of the Wisconsin Statutes, and the acts amendatory thereof and supplementary thereto, before me KATHY A. HALMA, Registered Professional Reporter and Notary Public in and for the State of Wisconsin, at the law offices of Godfrey & Kahn, 780 North Water Street, Milwaukee, Wisconsin, on the 15th day of December, 1994, commencing at 10:00 o'clock in the forenoon.

G. SLYMAN DEP.

1 A I don't remember talking about it. I just sent it to him
2 through the mail and said you ought to call this guy and have
3 him in.

4 Q Do you know if Mr. Kruse ever did that?

5 A No, he never did.

6 Q Was the decision as to who was going to be the General
7 Manager, was that going to be something Mr. Kruse was going
8 to make?

9 A Well, a general manager probably would be Kruse and probably
10 his boss, Teegarden. They would probably both get involved
11 in that decision.

12 Q Now, Mr. Running asked you about what you did in the six or
13 eight months you were there, and one of the things you
14 mentioned in answering his question was when you first got
15 there business was low?

16 A Uh-huh.

17 Q Were-- Did you-- Let me put it this way. When you left
18 there had that turned around?

19 A Oh, I don't recall. Some. Some as I recall but not-- In
20 terms of volume. In terms of cost control and that sort of
21 thing, we made money throughout that period. It was a
22 profitable operation when I came there. We maintained
23 profitability. I don't remember if we did better or not as
24 well, but we maintained profitability through that period of
25 time. But John Wheeler, again the prior GM, had some

1 General Manager at Milwaukee Die?

2 A That is right.

3 Q Do you know, was an accounting adjustment made so that
4 Milwaukee Die Casting would compensate Fisher for your
5 services?

6 A I think that's right, yes.

7 Q Now, while you were the temporary General Manager at
8 Milwaukee Die did any potential customers come through to
9 inspect the plant? I am sorry, I said potential customers.
10 I meant--strike that. While you were the temporary General
11 Manager of Milwaukee Die Casting Company, did any potential
12 buyers or their representatives come through the plant?

13 A Yes, uh-huh.

14 Q Did any representatives of George Slyman or George Slyman
15 himself come through the plant?

16 A Yes.

17 Q Do you recall Mr. Slyman himself coming through the plant?

18 A Indeed, yeah.

19 Q On how many occasions?

20 A Several. By through the plant you mean to make a call and to
21 visit and--

22 Q Yes.

23 A Because George wasn't one to walk through the plant. He
24 would occasionally, but I would say-- He and his brother
25 David were together in the business at that time, and maybe

1 secondly, to find a General Manager to operate the place on a
2 permanent basis.

3 MR. RUNNING:

4 Q Okay. Now, you mentioned in the union negotiations that
5 you--trying to get the words--I think you said that you
6 initially gave a poor mouth speech to the union
7 representatives?

8 A Yes.

9 Q Kind of an introductory speech and that you also were
10 involved at the closing of the deal to shake hands and all;
11 is that correct?

12 A That is correct.

13 Q Were you involved in the direct negotiations on other
14 occasions?

15 A I didn't sit in on them, but the attorney that did the
16 negotiations and that was Fred Muth, M-u-t-h. He had
17 negotiated the contracts there in prior years. So we wanted
18 to maintain that continuity, and of course he wouldn't go in
19 there with a license to do whatever he thought best. We
20 would discuss strategies, things like that, prior to--
21 usually--well, maybe invariably prior to and subsequent to
22 the meetings where he would come in and brief me as to how
23 things went and where we were going.

24 Q Okay. You also testified that your payroll checks still came
25 from Fisher Controls during the period you were temporary

1 A I had some dealings with them, most indirect, some direct.

2 It is a small plant.

3 Q What was your opinion of their competence?

4 A Very good, very high.

5 Q When you came to the plant did you see any need for any major
6 changes in the way it was being run?

7 A Well, we had--business was pretty bad, pretty slow; and John
8 Wheeler, the prior GM, had already laid off to the critical--
9 You get to the point you get critical--you got your key
10 people. You can't keep the plant going without those folks.
11 So we put in a four-day week, and other than that Bill and
12 whatever his last name was-- John Wheeler was a very good
13 manager and he had a good operation going, and I didn't want
14 to screw it up.

15 Q Would it be a fair characterization to say during the eight
16 months or so you were there you were a caretaker until--

17 MR. GIGANTE: I will object.

18 MR. RUNNING:

19 Q --until new ownership came?

20 MR. GIGANTE: Object to the characterization
21 of that.

22 THE WITNESS: Well, I would like to say I was
23 more than a caretaker, but the initial focus again was
24 twofold. One was to make sure we get the contract without a
25 work interruption within the outer limits imposed and,

1 temporary in nature, and part of my assignment was to seek
2 out a General Manager, and in that circumstance you don't run
3 in and make a bunch of changes and have somebody else come in
4 further down the road and they want to do things differently.

5 So--

6 Q Did you fire any of the senior staff people or make any major
7 personnel decisions?

8 A Well, yeah, one guy.

9 Q Who was that?

10 A One person, Bill. Can't think of his last name. He was--
11 He had a technical responsibility. He was like the technical
12 coordinator, something like that; and so I--as I recall I
13 asked for his resignation but--

14 Q Do you recall why you asked for his resignation?

15 A He was incompetent.

16 Q Okay. Who was responsible for the day-to-day functioning of
17 the die casting operation at the plant in terms of making
18 sure that the operation ran smoothly?

19 A The start-up and the direction of people?

20 Q Yes.

21 A Matthews through his foreman, Mike Matthews.

22 Q And did you consider Mr. Matthews to be competent in that
23 position?

24 A Yes.

25 Q What about the foremen? Did you evaluate their competence?

1 Q At least in 1981.

2 A I had never even toured a die cast plant before, and I knew
3 the only way I could do it is if they had a competent staff
4 there.

5 Q And you also testified that one of the first things you did
6 once you came to this temporary position in Milwaukee was to
7 hold a staff meeting. Do you recall that?

8 A Right.

9 Q And I believe you said earlier today that the question you
10 put to your staff was what can I do for you, what needs to be
11 done, something along those lines?

12 A That is right.

13 Q Did you come to this temporary position with any agenda in
14 mind other than operating the plant as best it could be run?

15 A No. That was it, get the contract, keep the plant going.

16 Q I want to ask you a few questions about the union
17 negotiations; but in terms of operational decisions, did you
18 make any operational changes in the way the plant was running
19 while you were temporary General Manager?

20 A Give me an example. Major? What do you mean?

21 Q For example did you change the sequencing of manufacturing?
22 Did you have new equipment installed? Did you--

23 A No.

24 Q Any major changes like that?

25 A No. It was more custodial in nature because my position was

1 do with it after that.

2 Q Now, do you recall, was it early June or late June of 1981
3 that you came to Milwaukee?

4 A I don't recall.

5 Q Are you sure it is June?

6 A Pretty sure, yeah.

7 Q Now, you mentioned that Mr. John Wheeler had passed away
8 unexpectedly. I understand he died of a heart attack in the
9 St. Louis airport.

10 A That is correct.

11 Q Do you know when that heart attack occurred?

12 A April or May.

13 Q Now, Carl asked you questions about the reasons that were
14 given by your superiors at Fisher for your getting this
15 assignment at Milwaukee Die, and you mentioned in response to
16 his questions that it was a temporary position. Do you
17 recall that testimony?

18 A That is right. Yeah.

19 Q Was it ever contemplated either by you or anyone at Fisher
20 that this would be a permanent assignment for you?

21 A It wasn't by me, and I don't think it was by Fisher.

22 Q Did you feel you had the requisite manufacturing experience
23 to be the manager of that plant on a permanent basis?

24 MR. GIGANTE: I will object to that question.

25 MR. RUNNING:

1 answer. It can't be because if Square D would call you
2 wouldn't say I am sorry, Fisher comes ahead of you. You take
3 care of everybody; but, you know, it is like this business.
4 We have regulars and we have people that come in once a year,
5 and you treat everybody decent; but, you know, it is not a
6 yes or no answer.

7 Q Okay. While you were at Milwaukee Die did you become aware
8 of any efforts to drain hydraulic fluids containing PCBs from
9 the die casting machines?

10 A Yes.

11 Q When did you first become aware of that?

12 A I don't remember. The first meeting I had-- The first thing
13 I did when I got there was have a meeting with the managers
14 and introduce myself and had them go around the table and
15 just tell me what they were-- What I did is I said, okay,
16 tell me what you are working on, what resources you need,
17 that kind of thing; and it could have come out then, I don't
18 recall.

19 Q Okay. Who at Milwaukee Die had been entrusted with the task
20 of draining those machines--draining the fluid from those
21 machines, overseeing that task?

22 A I think that was Mike Matthews probably. He was the
23 operations guy. I think his title was Manufacturing
24 Superintendent, and he had secondary and primary departments,
25 and as best I recall that had been done prior to my getting

1 THE WITNESS: Okay. I can answer now? No, I
2 would say it had to do with continuity of supply, die
3 castings. In the context understanding in 1975 the economy
4 was boiling over, you know, business was great, everybody was
5 doing good. You had a supplier that was producing--you were
6 buying 40 percent--35 to 40 percent of her output. You just
7 couldn't take the chance of letting that go, losing that
8 supply; and that was my understanding of why they got it.

9 Q Okay. Did Milwaukee Die grant to--strike that. In selling
10 products to Fisher, Milwaukee Die selling products to
11 Fisher--

12 A Uh-huh.

13 Q --did it grant or give Fisher any favorable lead times for
14 instance in selling products to Fisher?

15 A Are you speaking I hope of the time I was there?

16 Q Or-- Yes, the time you were there.

17 A Uh-huh. I think that's fairly reflected in the contract.
18 Fisher was--you know, the earlier exhibit that you had me
19 look at. Fisher was the biggest customer, and therefore
20 Fisher--any big customer gets priority.

21 Q Okay. So, the answer would be yes?

22 MR. RUNNING: The answer would be the answer
23 he gave. Objection to the question. It is asking the same
24 question.

25 THE WITNESS: Yeah. It is not a yes or no

1 organization.

2 Q Okay. And what did Mr. Kruse say-- How did that come about?
3 He just assigned you up there, said, "Art, we need you in
4 Milwaukee"?

5 A My boss was Mike McCoy, my Marshalltown boss; and the best I
6 can recall and the way it would have happened, he called me
7 up and said Larry Kruse wants to talk to you about a
8 temporary position; and maybe he told me what it was, I don't
9 recall; but in any case I went over to see Larry and he asked
10 if I would be willing to temporarily go to Milwaukee and
11 watch over that operation and make sure we get a union
12 contract signed without any interruption.

13 Q Any other charges or responsibilities you were given by
14 either Mr. McCoy or Mr. Kruse regards to your being assigned
15 to Milwaukee Die?

16 A Not at that time. Well, I was asked to see if I could
17 evaluate the staff or go outside and interview candidates as
18 possible successors to the GM position, to the General
19 Manager position.

20 Q To your position?

21 A To the one I was assuming on a temporary basis, uh-huh.

22 Q Okay. Now, so it is clear then, you were paid by Fisher as
23 you--while you were at Milwaukee Die?

24 A That is correct.

25 Q Did you receive any-- What, did you receive a weekly salary,

1 A It was from that time until February or early March of '82.

2 Q Now, what was the title that you had there at--while you were
3 at Milwaukee Die?

4 A General Manager.

5 Q Okay. Who did you report to as General Manager of Milwaukee
6 Die?

7 A Larry Kruse, K-r-u-s-e.

8 Q And what was Larry's position?

9 A I don't remember what he was titled. He had responsibility
10 for several of the--I will refer to them as incidental Fisher
11 locations such as the Fisher service companies and Milwaukee
12 Die.

13 Q And how was it that you were assigned to General Manager of
14 Milwaukee Die?

15 A I was-- My background in personnel committed me I guess to
16 go up there in large part because they had a union contract
17 that was about to expire. The General Manager who had been
18 there for many years prior to the acquisition had died
19 suddenly, and there was no one in place to back him up or to
20 fill that position. So Fisher management I guess decided
21 that Rogers would be the one to go up there and make sure we
22 get the union contract signed.

23 Q Was there anyone specifically who assigned you up to
24 Milwaukee Die?

25 A Principally Larry Kruse. He was the boss of the

1 present capacity in April of '93.

2 Q Okay. With respect to Fisher Controls, your employment
3 there, could you take me through that history in terms of
4 what positions you had--

5 A Okay.

6 Q --and whatnet?

7 A I went in, started as titled Assistant Personnel Director and
8 moved up within that function and was Manager/Employee
9 Relations by title in August of 1977 when I became Operations
10 Manager. Then in 1982 I can't remember what my title was.
11 It was-- I just don't remember. I did coordinating work for
12 the international organization as part of the marketing
13 function.

14 Q Okay. And then after that, after '82, you left Fisher?

15 A Yeah.

16 Q No, I am sorry. What happened after '82?

17 A I left Fisher in the latter part of '83.

18 Q Okay.

19 A And then went to work for IDS.

20 Q Now, while you were at Fisher did you at any time assume a
21 position at Milwaukee Die Casting Company?

22 A Yes.

23 Q Okay. When was that?

24 A In June of '81, 1981.

25 Q And what was the period of time of that position?

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING COMPANY,
SLYMAN INDUSTRIES, INC., and
THERESA A. SLYMAN,

Plaintiffs,

Case Number
93-C-0325

-vs-

FISHER CONTROLS
INTERNATIONAL, INC.,

Defendant.

DEPOSITION of ARTHUR D. ROGERS, called as a witness
in the above-entitled matter, taken at the instance of the
Plaintiffs, under the provisions of Section 804 of the
Wisconsin Statutes, pursuant to notice, before Alis A.
Piasecki, a Notary Public in and for the State of Wisconsin,
at the Timber Inn in the City of Phillips, Wisconsin, on the
6th day of January, 1995, commencing at 11:30 o'clock a.m.

APPEARANCES:

Carl A. Gigante, FORAN & SCHULTZ, Attorneys at Law,
30 North La Salle Street, Chicago, Illinois,
appeared on behalf of the Plaintiffs.

Andrew Running, KIRKLAND & ELLIS, Attorneys at Law,
200 E. Randolph Drive, Suite 6100, Chicago,
Illinois, appeared on behalf of the Defendant.

Greg Slyman was also present.

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ROGERS DEP.

EXAMINATION

2 BY MR. ELLIS:

3 Q. Did you receive monthly reports from Milwaukee Die about
4 the PCB cleanup?

5 A. (Witness shakes head no.)

6 Q. You have to give me an audible yes or no.

7 A. No.

8 MR. ELLIS: That's it. No more. They're going to type
9 this up into a little booklet form, and the questions and answers
10 are all in there. You have the opportunity to read that and sign
11 it or you can just waive your signature. I think it's probably
12 best for you to read it and sign it, but it's your decision. So
13 you just have to tell me what you want to do.

14 MR. CARUSO: I'm sure he's going to want his own copy to
15 refer back to in years to come.

16 THE WITNESS: I'll read it.

17 (The deposition was concluded at 11:55 a.m.)

18

19

20

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EXAMINATION

1
2 BY MR. CARUSO:

3 Q. You mentioned monthly reports from Milwaukee Die. We
4 looked earlier at Exhibit 307 which was Mr. Rodgers' handwritten
5 report to you about the status of PCB disposal.

6 A. Uh-huh.

7 Q. It appears to be as of October 28, 1981.

8 A. Uh-huh.

9 Q. Did you include this within your definition of monthly
10 reports that would come to you?

11 A. This would be probably in addition, but --

12 Q. In addition to the regular report?

13 A. Yeah. Monthly reports were just, you know, the standard
14 financial reporting.

15 Q. And if something out of the ordinary was occurring, like
16 a PCB removal process, that would be included; is that correct?

17 A. Well, obviously, information had to be passed along at
18 some point in time, and, you know, Mr. Rodgers certainly felt that
19 I needed to be aware of it. This report is not part of a standard
20 monthly report, is what I'm saying.

21 Q. This is something in addition to the regular report that
22 you received?

23 A. Yeah. Yes.

24 MR. CARUSO: No further questions.

25 MR. ELLIS: I just have one more question.

1 A. You put together an appropriation request, and it kind
2 of went up through the same -- you know, the guy that had the
3 plant responsibility used to put the request together because he
4 was intimately familiar with why the capital expenditure was
5 required and what it was going to be used for, and I would have
6 signed off on it. And there was a certain level that I could sign
7 off on, and I don't recall what that was. But then -- you know,
8 it kind of went up by levels. Mr. Teagarten also had that, and if
9 it got to another certain point, if it was a large request, it
10 would have to be approved in corporate.

11 Q. And for the level that Milwaukee Die Casting didn't have
12 authority on its own to spend, what would that be?

13 A. Dollarwise?

14 Q. Generally, yeah. If you can't remember the dollar
15 amount, would that be a relatively large dollar amount?

16 MR. CARUSO: Objection; ambiguous.

17 A. It would have been probably somewhat significant, yeah.
18 What you didn't want to do is make that amount so small that you
19 stymied the day-to-day operation of that operation.

20 Q. Did you ever have occasion, during the time that you
21 were the director of the Fisher service companies, to review or
22 receive capital expenditure requests from Milwaukee Die Casting?

23 A. To the best of my knowledge, we never had one that
24 large.

25 MR. ELLIS: I don't have any more questions.

1 MR. CARUSO: Objection. It's ambiguous.

2 Q. Do you understand the question?

3 A. Yes.

4 Q. Okay. How would you characterize the business of
5 Milwaukee Die Casting vis-a-vis Fisher's business?

6 MR. CARUSO: Same objection.

7 A. Can I answer the question?

8 Q. Yes.

9 MR. CARUSO: Of course.

10 A. Completely different business. You know, they were a
11 supplier of Fisher, a completely different -- almost a stepchild
12 within the Fisher operation. Well, not almost. It was. Fisher
13 didn't understand the business.

14 Q. Earlier, you talked about there being a level of capital
15 expenditures at which Milwaukee Die Casting had its own autonomy
16 to spend; is that right?

17 A. Correct.

18 Q. Now, if a company like Milwaukee Die Casting wanted to
19 get approval for a capital expenditure, what would that entail?

20 A. Well, there were certain levels at which they could make
21 their own decisions, and then at a larger level -- and I don't
22 know where the numbers break down. But at larger levels, you
23 would generate what we referred to as an appropriation request and
24 get Fisher approval for it, which would have come out of Clayton.

25 Q. And how would you get the approval?

1 A. It would have been Art Rodgers.

2 Q. Was there any day-to-day reporting to you by either Mr.
3 Wheeler or Mr. Rodgers?

4 A. No, there wasn't day-to-day reporting. There was just
5 the month end financial information, and pretty much everything
6 was encompassed in a month-end-type report. You know, we did not
7 have conversations every day or a day-to-day-type thing, no.

8 Q. During the time that you were the director of Fisher
9 service companies, did Milwaukee Die Casting keep its assets
10 separate from those of Fisher?

11 MR. CARUSO: Calls for speculation. Lack of
12 foundation.

13 A. I don't recall.

14 Q. Did Milwaukee Die Casting receive business from
15 companies other than Fisher during the time that you were --

16 A. Yeah, they had other customers.

17 Q. Did Milwaukee Die Casting pay its own bills during the
18 time you were director of the Fisher service companies?

19 A. Yeah.

20 Q. Did Milwaukee Die Casting collect its own receivables
21 during the time that you were director of the Fisher service
22 companies?

23 A. Yeah. They operated pretty much autonomously.

24 Q. And how would you characterize Milwaukee Die Casting's
25 business with respect to Fisher's business?

1 Q. Are you aware of any analysis that the financial people
2 performed in terms of assessing the value of the company for
3 purposes of selling it?

4 A. I'm sure there would have been some financial
5 involvement in coming up with a price, yes.

6 Q. And were you in the loop on that?

7 A. No, I was not. I was completely out of the sales loop.

8 Q. Were you aware of any long-range plan or business
9 strategies that were implemented for Milwaukee Die Casting in 1981
10 or 1982 --

11 A. No, I don't recall.

12 Q. -- other than the sale itself?

13 A. I don't recall.

14 Q. At any time at all, did you have any knowledge of any
15 effort to increase the volume of business between Fisher and
16 Milwaukee Die; that is, the business where Milwaukee Die would
17 sell its die casting product to Fisher?

18 A. No. That discussion or that, whatever you want to call
19 it, relationship, would have taken place between Milwaukee Die and
20 Fisher purchasing department.

21 Q. Did you ever discuss that matter with Mr. Boyd?

22 A. No. I think Mr. Boyd was out of the loop before I
23 assumed the responsibility of Milwaukee Die.

24 Q. Did you ever discuss Milwaukee Die with Mr. Boyd?

25 A. No.

1 die casting business.

2 The success of that business on a large part was based
3 on Mr. Wheeler's participation in it. And being a small
4 business -- to continue with the answer to that question, the
5 employees immediately have concern when you lose someone of that
6 influence, that kind of influence in a business. Everybody is
7 very concerned what the hell is going to happen now. And that was
8 the reason for the visit, number one, to assure the ongoing
9 employees in that business that we'd come to grips and deal, you
10 know, with that problem and replace him.

11 Q. Did you address the employees of Milwaukee Die Casting
12 Company to assure them that something would be done?

13 A. No. There was no general gathering of all the
14 employees. I would have had meetings with the various key
15 managers in the business.

16 Q. And who were those people?

17 A. I don't remember their names.

18 Q. Did you meet with Earl Ceese? Does that name refresh
19 your recollection?

20 A. I recall the name, but I don't recall what his
21 responsibility was.

22 Q. Do you know if you ever met the man in person?

23 A. Not specifically, but I probably would have.

24 Q. Did you ever meet a man named Art Rodgers?

25 A. Yes.

1 Q. And who did you make that recommendation to?

2 A. It would have been made to the Fisher -- I don't know
3 what you call them, the Fisher corporate office in Clayton,
4 Missouri.

5 Q. Did you write a letter to that effect or a memorandum,
6 something in writing?

7 A. I don't recall.

8 Q. Did you discuss with Mr. Wheeler, before his death, the
9 possibility of selling the company to Mr. Wheeler?

10 A. I did not discuss that with him.

11 Q. Are you aware that he apparently was interested in
12 buying it before his untimely death?

13 A. No.

14 Q. You said you made a visit to the plant in Milwaukee
15 after Mr. Wheeler died. Is that correct?

16 A. Uh-huh.

17 Q. What was the purpose of that visit?

18 A. Well, it was one of those visits just to make sure there
19 would be an on-time -- the business would be ongoing, because Mr.
20 Wheeler was a very important part of that business, and he
21 understood the business. He understood the customer base, and
22 when he passed away, it put a big hole in the organization. And I
23 think, probably, it was one of the reasons why at least I was
24 influenced to make the recommendation we ought to get out of that
25 business, because no one in Fisher had any experience in running a

1 arm's length type of relationship. They kind of ran their own
2 business. They knew that business. Like I said, you know,
3 generally Fisher was not involved in that business, and that's
4 probably was one of the reasons Fisher elected to sell that
5 business, because it wasn't a good fit.

6 Q. Do you know or are you speculating as to the reason
7 Fisher elected to sell?

8 A. No.

9 Q. You don't know?

10 A. Do I know what?

11 Q. You testified a second ago as to a possible reason why
12 Fisher may have wanted to sell Milwaukee Die, and my question was
13 whether you're speculating as to that reason or whether you have
14 some knowledge based on conversations or facts you learned at the
15 time.

16 A. No. The reason they sold Milwaukee Die was because it
17 did not have a good fit in the business and the decision was made
18 to sell the business.

19 Q. Did you participate in that decision?

20 A. Yes, I did.

21 Q. Did you make a recommendation to sell the company?

22 A. Yes, I did.

23 Q. And I take it, the basis of your recommendation is you
24 thought it was not a good fit?

25 A. That's right.

1 of things that were more service-related, I guess somebody decided
2 that it made sense to slot that into my organization.

3 Q. When you referred to Fisher service companies, what did
4 you mean by that term?

5 A. Fisher service companies are -- I don't know how many
6 are located now, but at the time I had the responsibility, there
7 were three or four little valve repair operations strategically
8 located in the United States where customers could bring the
9 Fisher product, the control valve product specifically, and have
10 it repaired. It was more economical to do that in some cases than
11 buy new equipment, and Fisher marketing recognized that as an
12 opportunity.

13 Q. So these were companies that Fisher acquired?

14 A. Companies that Fisher started.

15 Q. Started?

16 A. Yes.

17 Q. And they were corporations separate than Fisher itself?

18 A. No.

19 Q. They were divisions of Fisher?

20 A. They were divisions of Fisher, yes.

21 Q. Do you know what the corporate relationship was between
22 Milwaukee Die and Fisher?

23 A. Not specifically, no.

24 Q. Do you have a general idea?

25 A. Well, it was -- generally, I would say it was more of an

1 discussed?

2 A. No, I don't, but it would have been just pretty much a
3 general tour of the operation.

4 Q. Did you meet anyone besides Mr. Wheeler?

5 A. I don't recall.

6 Q. Can you think of anything that would refresh your
7 recollection about that first visit?

8 A. No, it was just -- I suspect it was just to get
9 acquainted, familiarize myself with what the plant looked like,
10 because I had no specific knowledge about a die casting operation.

11 Q. You had no knowledge of the die casting business or how
12 it operates?

13 A. No.

14 Q. At any time, did you gain such knowledge?

15 A. Not really. It was -- I had the responsibility for a
16 very short period of time.

17 Q. Do you recall the reasons, if any -- well, there must
18 have been some reason why you were given that responsibility at
19 Fisher. Do you recall what that reason was?

20 A. Well, the Milwaukee Die Company never had a real fit in
21 the Fisher type of business, you know. They were a supplier for
22 Fisher. I don't know why. I don't recall what the reasons were
23 that Fisher bought the darned thing. They had to put it
24 somewhere, and since, at that time, I had the responsibility for
25 the Fisher service companies, and just education and those sorts

1 A. No.

2 Q. Did you ever see a document that set forth what the
3 level was? In other words, was the policy written down somewhere?

4 A. I'm sure there would have been, but I don't recall what
5 they were.

6 Q. Did you play any role in establishing that policy or
7 setting that level?

8 A. No.

9 Q. Do you know who did?

10 A. That would have come out of the Fisher corporate
11 headquarters.

12 Q. And do you know the names of the individuals at Fisher
13 who would have set that policy?

14 A. No, I would not know who would have been involved in
15 establishing that policy. They -- well --

16 Q. As a director of Milwaukee Die Casting Company -- I'm
17 focusing on that position which you occupied for a period of
18 time --

19 A. Uh-huh.

20 Q. -- as opposed to your situation at Fisher itself. But
21 as a director of Milwaukee Die Casting, did you have any input
22 into capital investment decisions?

23 A. I don't recall. I don't even recall what role I played
24 as director of Milwaukee Die.

25 Q. Did you ever attend a directors' meeting?

1 what the procedures were.

2 Q. Could you tell me today what those procedures were?

3 A. Not specifically, I don't recall, no.

4 Q. Well, you say you don't have a specific recollection.

5 Is there some general recollection that you have?

6 A. I don't know. Do you have a general question that you
7 want to ask me?

8 Q. Well, the same one I've been asking you. Do you have a
9 general understanding of the procedures for capital investments
10 made by Milwaukee Die Casting?

11 A. Well, the general understanding that I would have --
12 remember, this goes back a long ways. I didn't make a point to
13 remember a whole lot about Milwaukee Die after I left Fisher. But
14 there were some procedures whereby there were -- procedures in
15 regard to capital expenditures. Milwaukee Die would have had the
16 authority or authorization to make certain capital expenditures at
17 their plant level without having to receive approval from Fisher
18 or the Fisher board or Fisher corporate headquarters, and there
19 was some level where they would have had to receive, you know,
20 authorization to go ahead with expenditures, but I do not recall
21 what those levels were.

22 Q. And by level, you're referring to a dollar amount that
23 was the cutoff?

24 A. Yes, capital investment level.

25 Q. You don't remember what the cutoff was?

1 A. I don't recall.

2 Q. Do you know if Mr. Boyd ever had any responsibility or
3 role on behalf of Fisher with respect to Milwaukee Die?

4 A. I don't recall.

5 Q. Do you remember a man named Fred Schrader?

6 A. No.

7 Q. If I told you he was the person who either directly or
8 on behalf of other members of the Schrader family was the owner of
9 Milwaukee Die before Fisher, would that refresh your recollection?

10 A. No.

11 Q. So you didn't know any of the owners before Fisher
12 bought the company?

13 A. No. I didn't know anything about Milwaukee Die until I
14 got the responsibility for it.

15 Q. What responsibilities did you have for Milwaukee Die
16 Casting?

17 A. How would I describe that? Milwaukee Die, on a
18 day-by-day situation, pretty much operated autonomously of Fisher,
19 but as all corporations require, it had to have someplace to
20 report into, so I was assigned the responsibility to report into
21 me.

22 Q. And then, I take it, you received reports from time to
23 time?

24 A. Yes.

25 Q. Did you receive written reports?

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN

3
4 MILWAUKEE DIE
5 CASTING CO., et al.,

6 Plaintiffs,

7 vs.

No. 93-C-0325

8 FISHER CONTROLS
9 INTERNATIONAL, INC.,

10 Defendant.

11 DEPOSITION OF LARRY KRUSE
12 January 19, 1995
13 10:00 a.m.
14 500 Fourth Street, Northwest
15 Albuquerque, New Mexico

16 PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE this
17 deposition was:

18 TAKEN BY: CARMEN D. CARUSO, ESQ.
19 Attorney for Plaintiffs

20
21
22 REPORTED BY: Anne E. Dehon, NM CCR #263
23 Hughes Southwest Court Reporters
24 121 Tijeras, Northeast
25 Albuquerque, New Mexico

HUGHES SOUTHWEST COURT REPORTERS
Anne E. Dehon, CCR
(505) 843-8211

7

KRAUSE DEP.

1 transferred prior to the cutoff date under the
2 consolidated return regs.

3 That was the position that was taken
4 on both returns, to my knowledge, and a position
5 that's never been disputed by the IRS.

6 Q. Other than the general representation
7 that the burdens and benefits of ownership of
8 Milwaukee Die Casting had transferred to the new
9 owners prior to the end of the month of January
10 1982, were there any more detailed factual
11 findings that needed to be made?

12 A. I have no recollection as to the
13 specific representations that were made, but they
14 would be a part of the tax returns.

15 - - - - -
16 (Thereupon, Defendant's Exhibit 53
17 was marked for purposes of
18 identification.)

19 - - - - -
20 Q. Mr. Glaser, the court reporter has
21 marked as Exhibit 53 an April 12, 1983 letter
22 that you appear to have written to Mr. J. L.
23 Simmons, director of tax for Fisher Controls.

24 Do you recognize your signature on
25 the third page of the document?

1 which occurred within the first 30 days of the
2 year to be treated as though it had occurred
3 prior to the end of the year. The issue then
4 became when did the acquisition for tax purposes
5 occur, and the position that was being taken was
6 that for tax purposes the acquisition occurred
7 prior to the closing, even though the closing
8 took place on whatever date it took place, I
9 don't recall the exact date, but it was beyond
10 that time frame so that the legal argument that
11 was taken with the government was that under the
12 tax rules, for tax purposes, the transaction
13 closed or took place prior to the cutoff point in
14 the consolidated return rights.

15 Q. And my more specific question is,
16 what factual representation had to be made to the
17 IRS or either on the tax return or to the IRS
18 subsequently in order for Milwaukee Die Casting
19 to successfully take the position that for tax
20 purposes --

21 A. The tax rule, which is in issue, is a
22 rule that says for tax purposes a transaction
23 occurred when the burdens and benefits of
24 ownership transfer and the position that was
25 taken was that the burdens and benefits

CEFARATTI-RENNILLO

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AKRON (216) 253-8119

1 Q. So ultimately, even though the
2 closing did not occur until February 23rd of
3 1982, Milwaukee Die Casting was able to take the
4 position that for tax purposes the transaction
5 was effective January 31 of 1992?

6 A. That's correct. Let me correct that
7 answer, I don't recall whether it was January 30
8 or December 31, but the answer to your question
9 is Milwaukee was able to take the position in
10 conjunction with Fisher Controls which allowed
11 the loss to be carried forward.

12 Q. Did Milwaukee Die Casting have to
13 make any factual representations to the IRS to
14 successfully assert that position?

15 MR. CARUSO: Objection, relevance.
16 Go ahead and answer.

17 A. Yes, as did Fisher Controls.

18 Q. What were those factual
19 representations?

20 A. You want me to explain the legal
21 theory under which this was done?

22 MR. CARUSO: Same objection.

23 Q. Sure.

24 A. Basically, the consolidated return
25 regulation at the time allowed for an acquisition

1 desire on Slyman's part?

2 A. I don't recall giving reasons. That
3 was a part of the basic plan that had been
4 devised and there was discussion of how to
5 accomplish it.

6 Q. Why was that part of the basic plan?

7 A. Because there was a loss carryover
8 that was attempting to be utilized by the ongoing
9 operating company.

10 Q. A loss carryover held by whom, by
11 which company?

12 A. Milwaukee Die had a loss which could
13 be carried forward under certain technical tax
14 rules and the effort was to make arrangements so
15 that it could properly be claimed on the tax
16 returns after the acquisition.

17 Q. Did that depend on the agreement
18 being effective at year end 81?

19 A. Yes. Well, technically within the
20 first 30 days after the year end.

21 Q. So if the agreement were effective
22 the end of January 1992 you would have achieved
23 the tax consequences you desired?

24 A. Yes. And, in fact, those tax
25 consequences were achieved, ultimately.

CEFARATTI-RENNILLO

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1 acquisition?

2 A. Yes.

3 Q. And you recall that that transfer of
4 the real property was an integral part of the
5 acquisition?

6 A. I don't understand what you mean by
7 an integral part.

8 Q. It was necessary in order to
9 accomplish the acquisition as envisioned by the
10 Slyman group?

11 A. Yes.

12 Q. Did any representative of Fisher ever
13 indicate to you that they had any reason to
14 transfer the real property of Milwaukee Die
15 Casting Company to Fisher absent an agreement
16 with Slyman to consummate the acquisition?

17 A. I have no knowledge of their motives
18 or intents or plan.

19 Q. They didn't tell you they were
20 planning to do it anyway?

21 A. I don't have any recollection of
22 that. I don't know, they may have.

23 Q. Are you aware of any reason why they
24 would have wanted to transfer the real property
25 to Fisher absent this request from Slyman?

CEFARATTI-RENNILLO

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AKRON (216)253-8119

1 claim of privilege and it's incumbent upon you in
2 making that claim to have satisfied yourself that
3 it's a valid claim. That's my position.

4 Mr. Glaser, the court reporter will
5 mark as Exhibit 20, a December 14, 1981 letter
6 from Mr. Pylipow to Mr. Slyman.

7
8 (Thereupon, Defendant's Exhibit 20
9 was marked for purposes of
10 identification.)
11

12 Q. Have you ever seen this letter
13 before?

14 A. I have no independent recollection of
15 it.

16 Q. Do you recall that the Slyman group
17 did, in fact, request that Fisher break up the
18 acquisition agreements into a separate real
19 estate purchase agreement and a separate stock
20 purchase agreement?

21 A. Yes.

22 Q. And do you recall that the Slyman
23 group requested that Fisher arrange for Milwaukee
24 Die Casting to dividend to Fisher the real
25 property prior to the consummation of the

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIE CASTING CO.,
SLYMAN INDUSTRIES, INC.
and THERESA A. SLYMAN,
Plaintiffs,
vs. Case No.
FISHER CONTROLS 93 C 0325
INTERNATIONAL, INC.,
Defendant.

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Deposition of ROBERT E. GLASER, a
Witness called by the Defendant for examination
under the Applicable Rules of Federal Civil
Procedure, taken before me, Steven H. Henschel, a
Registered Professional Reporter and Notary
Public in and for the State of Ohio, pursuant to
notice and stipulations of counsel, at the
offices of Arter & Hadden, 1100 Huntington
Building, Cleveland, Ohio, on Wednesday, November
9, 1994, at 10:00 o'clock a.m.

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1 or Fisher?

2 A. To the best of my knowledge, it was paid for entirely
3 by Milwaukee Die Casting from their internal cash flow.

4 Q. So it was not necessary for Fisher ever to provide any
5 cash infusions for capital spending purposes to Milwaukee Die
6 Casting?

7 A. Again, to the best of my awareness, that's right.

8 Q. And you've already testified you can't recall a single
9 instance in which any recommendation of Milwaukee Die Casting's
10 management for capital spending was ever rejected by Fisher
11 Controls. Is that correct?

12 A. I can't recall any.

13 Q. Mr. Boyd, did you ever involve yourself in the
14 day-to-day management of Milwaukee Die Casting Company?

15 A. No.

16 Q. Did you ever involve yourself in the setting of
17 corporate policies at Milwaukee Die Casting Company concerning
18 the operation of the die casting business?

19 A. No.

20 MR. CARUSO: Objection; ambiguous.

21 Q. Did you ever assert control over any environmental
22 decisions at the plant?

23 MR. CARUSO: Objection; ambiguous.

24 A. No.

25 MR. RUNNING: One second here. I have no further

1 operation that would be successful and profitable in its own
2 right.

3 And it would be my belief through the years of my
4 awareness of the operation of Milwaukee Die Casting Company
5 after it was acquired by Fisher that both of those purposes were
6 achieved. We did have a dependable supplier of castings and we
7 did have another company that was a profitable contributor to
8 the Fisher organization as a whole.

9 Q. Mr. Boyd, do you recall whether Milwaukee Die Casting
10 Company's retained earnings increased over the years in which
11 the common stock of the company was owned by Fisher?

12 A. My memory isn't good enough to look to any of the
13 details relating there, but as I recall the information being
14 conveyed to me in a general sense, there was an increase in--
15 First of all, there was an increase in investment; but in spite
16 of that increase in investment and its cost, there was a
17 continuing increase in earnings provided to Fisher by Milwaukee
18 Die.

19 Q. As a result of that success, was there any, ever any
20 occasion on which the management of Milwaukee Die Casting
21 Company was required to go to Fisher for any capital infusions?

22 A. Not any massive capital infusion. There was in their
23 budget and their planning for each year, some additional
24 equipment visualized and recommended and approved and installed.

25 Q. Was that equipment paid for by Milwaukee Die Casting

1 we subsequently did that.

2 And, again, I would emphasize that we looked to him of
3 necessity because we didn't have those kind of capabilities and
4 that because we didn't have those capabilities, the operation of
5 the company remained strongly in the hands of the people who had
6 really been responsible for it before because Mr. Schrader had
7 to some degree, backed away from the full depth of broad
8 management responsibilities.

9 Q. Okay. Mr. Boyd, as the vice-president for
10 manufacturing of Fisher Controls and then later the senior
11 vice-president for manufacturing of Fisher Controls, how would
12 you characterize your objectives in overseeing the business of
13 the Milwaukee Die Casting Company subsidiary of Fisher?

14 A. Well, I think I alluded to this in a comment earlier,
15 but basically in our acquisition of the company and in our
16 presentation of everything relating to it, we were looking to
17 two things. One was maintaining a very important supplier to
18 Fisher who, through the years, had provided quality castings at
19 competitive prices, and we didn't want to lose that capability
20 in procurement and face the difficulty of placement of those
21 dies with new vendors and the technical problems that were bound
22 to relate to that.

23 The other thing, of course, was that we didn't want to
24 have to continue to pay for that capability beyond the purchase
25 of the company originally, and that we were looking to an

1 Mr. Wheeler was selected as executive vice-president and general
2 manager of Milwaukee Die Casting in 1975?

3 A. Yes, I think I can. Other than a user of die
4 castings, we had no expertise within the Fisher organization
5 relating to the manufacture of die castings and we were looking,
6 in looking in the acquisition of Milwaukee Die, as to how that
7 expertise would be provided, not only in the manufacturing, but
8 in the related marketing and the whole structure of the
9 operation of a die casting business.

10 So, we looked to Milwaukee Die with the help of
11 Mr. Schrader to see what internal capabilities they would bring
12 to us. We looked with some concern because our principal
13 contact through the years had been with Mr. Schrader who we
14 regarded as a very competent individual in every phase of the
15 die casting business, and he really had only two people up there
16 to talk to us about.

17 One was Mr. Suess, who was in the manufacturing
18 operations, and the other, Mr. Wheeler, who had joined them far
19 more recently, but was well aware of the die casting process and
20 the marketing of die castings and the aspects of the profitable
21 operation of the business in that regard. Mr. Wheeler had
22 become Mr. Schrader's understudy in a broad sense in the
23 management of the business, and it was Mr. Schrader's
24 recommendation that we name Mr. Wheeler to the responsibility
25 for the operation of the company. And as the records indicate,

1 of the old Milwaukee Die Casting Company as of 1975?

2 A. I do not know now. I presume I would have known what
3 the purchase agreement would have been at that time.

4 Q. In Exhibit 249 there's a reference to Mr. Hanley,
5 H-A-N-L-E-Y. He's named on page two in the first full
6 paragraph, second line. Do you know who he was?

7 A. President and chief executive officer of Monsanto is
8 all.

9 MR. RUNNING: That's enough for me.

10 A. I would have traded positions and income with him at
11 the drop of a hat.

12 MR. CARUSO: I have no further questions.

13 MR. RUNNING: I want to take about a two-minute break.
14 I'll have a very brief cross.

15 (There was a break taken.)

16 MR. CARUSO: For the record, I would like the record
17 to reflect that during the break between the conclusion of my
18 examination and the beginning of Mr. Running's examination,
19 Mr. Running and the witness conferred, and while we don't know
20 what they discussed, I think the conference was improper. You
21 may continue.

22

23 CROSS-EXAMINATION

24 BY MR. RUNNING:

25 Q. Mr. Boyd, could you describe how it was that

1 Q. Did Fisher ever award bonuses or pay bonuses to any of
2 the Milwaukee Die personnel as a reward for a good performance
3 or a good year, that type of thing?

4 A. Not to my awareness.

5 Q. Did you-- Were you aware of any changes made in the
6 pension plan or benefits received by the employees of Milwaukee
7 Die after the Fisher acquisition? Were any changes made, and,
8 if so, were you aware of them?

9 A. I would say no, I was not aware of any specific
10 changes. Your question somehow or another brings to mind an
11 awareness that at a point in time I knew that there were some
12 discussions relative to such things up there, and I can't recall
13 ever knowing any more than that.

14 MR. CARUSO: Counsel, our stipulation as to the
15 minutes of Milwaukee Die or the actions of the directors of
16 Milwaukee Die--

17 MR. RUNNING: Well, actually what I--

18 MR. CARUSO: Does our stipulation extend to some of
19 these pension documents, these actions through unanimous written
20 consent of the Milwaukee Die Casting board of directors related
21 to pensions?

22 MR. RUNNING: Yes. Yes.

23 Q. Were you aware of any decisions to cancel life
24 insurance policies held by any of the Milwaukee personnel that
25 the company had paid for prior to the cancellation?

1 other Milwaukee Die officers or employees that you had contact
2 with in the course of your duties as president?

3 A. Not that I can recall at this time. And I'm sure that
4 there would have been no intimate contact with anyone else up
5 there.

6 Q. Did you have any responsibilities for compliance with
7 the Occupational Safety and Health Act, commonly referred to as
8 OSHA, while you were the president of Milwaukee Die?

9 A. Not that I recall.

10 Q. Are you aware that Monsanto provided some measure of
11 assistance to Milwaukee Die on that subject?

12 A. I had heard that that was true and would not be
13 surprised if that was true because Monsanto provided those
14 services to a number of Fisher businesses.

15 Q. You just weren't involved in that subject; is that
16 correct?

17 A. You are right, I was not involved in that subject.

18 Q. No one had to-- No one reported to you as to OSHA
19 compliance?

20 A. No.

21 Q. Do you know whether Mr. Wheeler was paid by Milwaukee
22 Die or by Fisher?

23 A. I do not specifically know. I would presume that he
24 was paid entirely and directly by Milwaukee Die and in no way
25 was reimbursed by Fisher or Monsanto.

1 profitable?

2 A. As best I can recall, it was a profitable company. I
3 don't remember any questions being raised as to the viability of
4 the company or its lack of a suitable contribution to Fisher
5 over that period of time.

6 Q. Did the company pay dividends to its shareholder,
7 meaning Fisher?

8 A. I don't know.

9 Q. Do you know whether records exist which would tell us
10 whether the company was paying dividends to its shareholder?

11 A. I don't know that.

12 Q. Do you recall whether the company had a policy to
13 retain its earnings; that is, to accumulate cash within
14 Milwaukee Die Casting, or to distribute whatever earnings there
15 were to Fisher?

16 A. I don't know that.

17 Q. Did you review the financial statements of Milwaukee
18 Die Casting in your capacity as the president of the company?

19 A. Yes, I would have seen their general and periodic
20 statements.

21 Q. Who else in Fisher would see those statements?

22 A. The other directors; Tom Shive, the president of
23 Fisher, and Mike Leban, our chief financial officer.

24 Q. Meaning the other directors of Milwaukee Die who
25 happened to be Fisher officers?

1 Q. When a purchase was made by Milwaukee, did Fisher
2 advance the funds?

3 A. No. To the best of my awareness, the funds generated
4 from operations by Milwaukee Die Casting Company were, again, so
5 far as I know, sufficient to take care of their equipment
6 requirements.

7 Q. Are you aware of any exceptions where Fisher had to
8 advance the funds, either as a capital contribution or a loan?

9 A. Not to my awareness.

10 Q. During the years you were the president of Milwaukee
11 Die Casting, did Fisher, to your knowledge, increase its volume
12 of purchases from Milwaukee Die Casting from the level it had
13 been before the acquisition?

14 A. I don't know.

15 Q. During the period that you were the president of
16 Milwaukee Die Casting, did Fisher advance any money to Milwaukee
17 Die Casting in any form or for any purpose?

18 A. Not to my awareness.

19 Q. Did Fisher pay any expenses on behalf of Milwaukee Die
20 Casting?

21 A. Again, not to my awareness.

22 Q. Let me show you what I've marked as Exhibit 246
23 running from Bates stamp MDC 4491 through 4494 and see if you
24 can identify that document?

25 A. The only thing familiar there are some of the

1 A. No.

2 Q. Are you aware whether the Milwaukee Die Casting ever
3 changed any of its product prices, whether it raised its prices
4 or lowered its prices, during the years that you were the
5 president of the company?

6 A. No.

7 Q. No, that you're not aware?

8 A. No, I had no involvement in any such decisions and no
9 awareness of them.

10 Q. Did Fisher-- As a customer of Milwaukee Die Casting
11 during the period that you were the president of Milwaukee Die
12 Casting, did Fisher negotiate the prices that it would pay for
13 the Milwaukee Die Casting product?

14 A. Not to my specific knowledge, but Fisher would have
15 been in the process of negotiating pricing on any product with
16 any vendor.

17 Q. Fisher would shop for the best price available; right?

18 A. Yes.

19 Q. And who in Fisher-- During the years that you were
20 the president of Milwaukee Die Casting Company, who in Fisher
21 had responsibility for purchasing from Milwaukee Die Casting?

22 A. Well, our purchasing department who, at least at that
23 point in time, was an organizational responsibility to the
24 company treasurer, would have been basically responsible for
25 those decisions.

1 Q. Mr. Boyd, Mr. Leban and Mr. Shive?

2 A. Yes.

3 Q. Now, you mentioned that you had oversight
4 responsibility for forecasting. Is that correct?

5 A. Not for forecasting. That always came from Milwaukee
6 Die Casting Company. I had responsibility for reviewing and
7 considering that forecast and the related propositions to it
8 with them.

9 Q. Did pricing decisions made by Milwaukee Die Casting
10 Company--

11 A. I'm sorry, I didn't understand. Would you say that
12 again?

13 Q. Certainly. Did pricing decisions made by Milwaukee
14 Die Casting Company, that is the price that the company would
15 charge for its product, did that affect its forecasts?

16 A. Well, obviously it would relate to the forecast in
17 terms of profitability.

18 Q. Certainly. If they were going to raise the price, for
19 example, then they would be able to predict an increase in
20 revenue, assuming the volume remained constant. Right?

21 A. Yes.

22 Q. The-- Did you ever, during your years as the
23 president of Milwaukee Die Casting Company, participate in any
24 decision with respect to the prices charged by Milwaukee Die
25 Casting Company for its product?

1 Q. Can you answer the question as it was stated?

2 A. Well, in a broad and general sense, Mr. Wheeler would
3 have been responsible to those directors, but as I indicated to
4 you earlier, Mr. Wheeler had a broad range of responsibility
5 independently in the operation of Milwaukee Die Casting Company.

6 Q. You were the president of Milwaukee Die Casting
7 Company and a director of Milwaukee Die Casting Company; right?

8 A. Yes.

9 Q. And at all times in which you were the president and a
10 director of Milwaukee Die Casting Company, you were also the
11 vice-president of manufacturing or a senior vice-president of
12 manufacturing for Fisher. Correct?

13 A. I would have had some such title within Fisher, yes.

14 Q. Your compensation was always through Fisher; correct?

15 A. Yes.

16 Q. Did you ever receive compensation from Milwaukee Die
17 Casting?

18 A. No.

19 Q. And Mr. Leban, that's L-E-B-A-N, he was a director of
20 the new Milwaukee Die Casting Company; right?

21 A. Yes.

22 Q. And he was also an employee of Fisher; is that
23 correct?

24 A. He was a principal financial officer of Fisher.

25 Q. Do you know whether he was compensated through Fisher

1 Casting Company-- Strike that. As the president of the new
2 Milwaukee Die Casting Company following the acquisition of the
3 business from the old Milwaukee Die Casting Company, what were
4 your duties?

5 A. I maintained a contact point in the relationship
6 between Milwaukee Die Casting Company and the Fisher
7 organization. I was not involved in the normal course of
8 business or operation of Milwaukee Die Casting Company. As we
9 discussed before, I was involved in and participated in their
10 recommendations and the advancement of those recommendations so
11 far as capital equipment requirements. I would have been aware
12 year by year of their forecasts and their proposed budgets,
13 their forecast profitability and the need for any capital
14 expenditure to support that forecast in the budget.

15 Q. When-- I'm sorry, have you finished?

16 A. I was about to say that, in his responsibilities on
17 site, John Wheeler was basically responsible for the more
18 detailed operations and direction of Milwaukee Die Casting
19 Company.

20 Q. What was Mr. Wheeler's position following Fisher's
21 acquisition of the company?

22 A. I believe that he had the title of executive
23 vice-president.

24 Q. And general manager?

25 A. And general manager, yes, right.

1 Q. Did you form any opinions yourself as to whether or
2 not Milwaukee Die Casting, as it was being owned and operated by
3 the Schrader family, was profitable or was attractive because of
4 profitability?

5 A. Yes.

6 Q. What was your opinion on that subject?

7 A. That it was a profitable business. Essentially I
8 think it would have come down to two reasons for Fisher's
9 continuing interest. One was the desirability of having
10 Milwaukee Die Casting Company as a continuing vendor and
11 supplier to Fisher, and second was the fact that it was a viable
12 operation financially.

13 Q. Did Fisher have a price in mind, an amount it was
14 willing to pay for Milwaukee Die Casting?

15 A. I don't know. Certainly at this point I could not
16 answer that question.

17 Q. Do you recall the terms of the actual acquisition
18 which occurred?

19 A. No.

20 Q. It's rather lengthy, but I want to direct you to what
21 I've marked as Number 248 which -- unless counsel wants to
22 record the Bates numbers for us?

23 MR. RUNNING: It's MDC 5944 through MDC 6000.

24 Q. Without asking you to read the whole thing from cover
25 to cover, do you recognize that document?

1 important to Fisher?

2 A. I believe the statements made in there are -- were
3 logical and are logical.

4 Q. And apparently Fisher and Monsanto agreed with you,
5 correct, because the acquisition was completed?

6 A. Well, the easy answer is yes, they did. There was
7 some-- I was smiling because there were obviously further
8 discussions along the way.

9 Q. Internal discussions?

10 A. That's right.

11 Q. At Fisher and Monsanto?

12 A. Right.

13 Q. But the basic point of your letter that it was
14 important for Fisher to preserve Milwaukee Die Casting as a
15 supplier and that the importance of that vendor relationship
16 meant that Fisher should acquire Milwaukee Die, that point
17 remained unchanged. Right?

18 A. Yes.

19 Q. Did you, in the course of the acquisition, perform any
20 of the financial analysis of Milwaukee Die Casting for the
21 purpose of due diligence on the part of Fisher?

22 A. No, I did not directly.

23 Q. Were there others in the Fisher company that did that?

24 A. Our financial group under Mr. Leban would have been
25 responsible for that.

1 MR. RUNNING: Is this a new exhibit?

2 MR. CARUSO: That's Exhibit 218.

3 MR. RUNNING: This wasn't marked before today?

4 MR. CARUSO: No. Nothing I have has been marked
5 before today.

6 MR. RUNNING: Do you have a copy?

7 MR. CARUSO: I don't have any extra copies.

8 MR. RUNNING: Why don't we state the Bates numbers on
9 the record. No. 218 is MDC 5906 through 5907.

10 Q. It's fair to say that you recommended to Fisher and to
11 Monsanto that Fisher acquire Milwaukee Die?

12 A. Yes.

13 Q. Okay. Let me show you Exhibit 219. Can you identify
14 Exhibit 219? And I'd ask you to take a minute to read it and
15 refresh yourself with it. I'm sorry, counsel had asked me to
16 read the Bates number and I forgot to do that.

17 MR. RUNNING: For the record, it's MDC 4930.

18 A. I have read the letter. Again, obviously going back
19 to 1974, I don't remember it, although obviously it is of my
20 origin.

21 Q. Do you recognize your signature?

22 A. Yes.

23 Q. Okay. Sitting here today, can you tell us whether
24 that letter which you sent to Monsanto is an accurate summary of
25 the reasons why the acquisition of Milwaukee Die Casting was

1 acquisition?

2 A. Yes.

3 Q. Okay. Were you involved in these earlier
4 acquisitions?

5 A. No.

6 Q. Were there any others that you were going to describe
7 before I interrupted with my next question?

8 A. No. There may have been others, but they don't come
9 to mind.

10 Q. And I do apologize because I believe I interrupted
11 you. If you need to complete an answer, go ahead and tell me.

12 A. No.

13 Q. So the Milwaukee Die acquisition was the first
14 acquisition you were involved in on behalf of Fisher?

15 A. Yes, I believe that is entirely true.

16 Q. Okay. Just to help refresh your memory as to the time
17 period that we're talking about, I want to show you what's been
18 marked as Exhibit 218. Do you recognize that letter? It was
19 produced by Milwaukee-- Excuse me, it was produced by Fisher in
20 this lawsuit.

21 A. No, I don't recognize the letter.

22 Q. Right, and I don't think you're named on it in any
23 capacity. So you don't recognize that letter?

24 A. No.

25 Q. Okay.

1 and his family wanted to sell?

2 A. That number was developed in the course of considering
3 that acquisition.

4 Q. As you were considering the importance of Milwaukee
5 Die to Fisher?

6 A. Yes.

7 Q. After Milwaukee Die, do you recall the die casting
8 company that was the next largest vendor to Fisher during that
9 time period?

10 A. I cannot answer that question positively. Kiowa
11 Corporation here in Marshalltown was also a substantial
12 supplier, but I couldn't say that they would be second.

13 Q. Was there any other die casting company that was a
14 large one at the time?

15 A. There was indeed, but, again, my memory back that many
16 years does not produce a name.

17 Q. Sure. Now, prior to the time that Fisher made its
18 acquisition of Milwaukee Die -- and we'll get into the terms of
19 that in a few minutes -- are you aware of any other companies
20 that Fisher had acquired?

21 A. In a general way, yes. We acquired a small instrument
22 company many years ago whose name I can't even relate to you
23 now. We acquired a manufacturer of a specific ball valve a
24 number of years ago.

25 Q. Were these acquisitions prior to the Milwaukee Die

1 Q. So that takes us back into the 1950's; right?

2 A. Yes.

3 Q. And it could have been earlier than that; you just
4 don't know before you entered manufacturing. Right?

5 A. That's right.

6 Q. Was Milwaukee Die Casting a vendor to Fisher
7 continuously from the point you entered manufacturing until the
8 point that -- until 1975?

9 A. Yes.

10 Q. How many other die casting companies were vendors to
11 Fisher during this lengthy time period?

12 A. I don't know other than to say several.

13 Q. Was Milwaukee Die Casting the largest die casting
14 vendor to Fisher?

15 A. I cannot answer that positively, either. I know that
16 at a point in time I believe we speculated that -- well, more
17 than a speculation -- that approximately 50 percent of Fisher's
18 die casting requirements came from Milwaukee Die, and that, in
19 turn, was not as high a percentage as that of Milwaukee Die's
20 production.

21 Q. Did that 50 percent remain relatively constant over
22 the decade of the 1960's and early seventies?

23 A. I don't know.

24 Q. Was the 50 percent figure a number that was estimated
25 or calculated in the 1970's after you learned that Fred Schrader

1 Q. Who was the previous owner of Milwaukee Die, do you
2 remember?

3 A. The person that we knew with whom we dealt basically
4 was Fred Schrader. What breadth of ownership within the
5 Schrader family or elsewhere existed, I don't know. I think
6 Fred, so far as we were concerned, he was Milwaukee Die Casting
7 Company.

8 Q. And how long had Fred Schrader been Milwaukee Die
9 Casting Company as of 1975?

10 A. I don't know. He had been-- He'd been Milwaukee Die
11 Casting Company, shall we say, to Fisher for a long while before
12 that. I would hazard a of guess of 20 years, but that, again,
13 is a speculation.

14 Q. How long had Fisher been a customer of Milwaukee Die
15 Casting as of 1975?

16 A. I can't answer that question, either, but it certainly
17 was for a number of years. It was not a short-term
18 relationship.

19 Q. In your position in the manufacturing, after you left
20 engineering and became manufacturing, did you become aware of
21 the various vendors to Fisher?

22 A. Yes.

23 Q. And at the time you entered manufacturing, was
24 Milwaukee Die Casting a vendor to Fisher?

25 A. Yes.

1 Q. Do you recall instances when capital acquisitions for
2 Milwaukee Die Casting were discussed or reviewed by the Fisher
3 board of directors?

4 A. I do not.

5 Q. So you don't recall whether it was standard for the
6 Fisher board of directors to review these acquisitions?

7 MR. RUNNING: Objection; it assumes that the same
8 procedure is used regardless of the amount of the capital
9 request.

10 A. And, in any event, after this period of time I could
11 only speculate.

12 Q. Okay. Let me go back. We may come back to this
13 topic, but I want to go back and get into the beginning of the
14 relationship between Fisher and Milwaukee Die. When do you
15 recall the first time, or in general what is your first
16 recollection of the subject of acquiring Milwaukee Die? Do you
17 have a recollection of how this topic came up?

18 A. In a general way, I became aware, in behalf of Fisher,
19 that the ownership of Milwaukee Die was looking to a way to
20 divest themselves of their investment there and that, based upon
21 that awareness of their intent and aware of the importance to
22 Fisher of Milwaukee Die as a vendor, became concerned that the
23 ownership of Milwaukee Die might pass to someone whose ownership
24 was detrimental to the Fisher procurement that had been
25 favorable under the then existing Milwaukee Die ownership.

1 Q. And what was your involvement?

2 A. As such equipment recommendations were offered, I
3 would have reviewed them with the Milwaukee Die Casting people
4 so that I would have been aware of their intent and the reason
5 for their recommendation, and would have been involved, then, in
6 the further advancement of that request to the authorizing
7 agencies.

8 And I'm not sure specifically at what level that would
9 have gone to the Fisher board, and any degree to which that
10 might have gone beyond Fisher for Monsanto approval. Understand
11 I say I do not recall that.

12 Q. I understand. So, the request would come to you, and
13 if you agreed with the request, you would advance it to the next
14 level. Is that correct?

15 A. Yes.

16 Q. And if you disagreed with the request, would it stop
17 with you or would you submit your disagreement to the higher
18 level?

19 MR. RUNNING: Objection. It assumes he ever disagreed
20 with any request from Milwaukee management.

21 MR. CARUSO: That's a valid objection.

22 Q. Can you think of a situation-- Can you recall a
23 situation where you ever disagreed with the recommendations that
24 came from Milwaukee Die Casting?

25 A. I do not recall specifically any consideration of

1 A. I think I could say accurately that the
2 recommendations relative to capital investments at Milwaukee Die
3 Casting came from the management in site -- or on site for that
4 company and became a part of capital investment recommendations
5 to Fisher and Monsanto and were approved through the same chain
6 of approvals that would have applied to any other company within
7 Fisher.

8 Q. To make sure I understand your testimony, I believe
9 you've testified that the management of Milwaukee Die Casting
10 would make a recommendation which would then be subject to
11 approval by Fisher. Is that correct?

12 A. There would have been a level of investment beyond
13 which Fisher approval would have been required.

14 Q. Do you recall what that level was?

15 A. I do not.

16 Q. Do you think it was over, over \$10,000?

17 MR. RUNNING: Objection; calls for speculation. If
18 you know the answer, tell him. If you don't--

19 A. I do not know the answer.

20 Q. Okay. Could you describe the approval process or the
21 chain within Fisher?

22 A. My answer would be somewhat speculative and I,
23 therefore, withhold it.

24 Q. Did you participate?

25 A. Yes.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE CASTING
CO., et al.,

Plaintiffs,

vs.

No. 93-C-0325

FISHER CONTROLS
INTERNATIONAL, INC.,

Defendant.

DEPOSITION OF JAMES H. BOYD

taken before Mary E. Button, Certified Shorthand Reporter, at
the offices of Fisher Controls, 205 South Center Street,
Marshalltown, Iowa 50158; commencing at or about 12:30 p.m.,
January 4, 1995.

A P P E A R A N C E S

For the Plaintiffs

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For the Defendant

ANDREW R. RUNNING
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Also Present: Greg Slyman

BOYD DEP.

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing FISHER CONTROLS
INTERNATIONAL, INC.'S MEMORANDUM IN SUPPORT OF PARTIAL SUMMARY
JUDGMENT AS TO COUNTS I THROUGH III OF PLAINTIFFS' AMENDED COMPLAINT
to be served on the following persons by Federal Express courier:

James R. Figliulo
Carl A. Gigante
Carmen D. Caruso
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Dated: February 9, 1995


Andrew R. Running

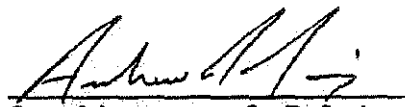
law, nor CERCLA, give rise to any joint and several liability of the third-party defendants to the third-party plaintiffs for contribution.").

As current owners of the MDCC plant, plaintiffs Theresa Slyman and Milwaukee Die Casting Co. are unquestionably liable under CERCLA § 107(a) and are restricted to bringing their CERCLA claims in this action under § 113. Because liability under § 113 is not joint and several, but several only, plaintiffs may not seek to impose joint and several liability against Fisher in this action, and Count I of MDCC's and Theresa Slyman's Amended Complaint should be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, this Court should grant summary judgment on Counts I through III of plaintiffs' Amended Complaint in favor of Fisher. In the alternative, in the event the Court allows any of plaintiffs' CERCLA claims to proceed to trial, all of Slyman Industries' and Theresa Slyman's CERCLA claims and MDCC's CERCLA § 107 claim should be dismissed as a matter of law.

Dated: February 10, 1995


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C. Liability In A Contribution Action Under CERCLA Section 113
Is Not Joint And Several.

Congress intended for courts to determine the scope of CERCLA liability "under common law principles." O'Neil v. Picillo, 883 F.2d 176, 178-79 (1st Cir.), cert. denied, 493 U.S. 1071 (1989); United States v. Monsanto Co., 858 F.2d 160, 171 (4th Cir. 1988); United States v. Chem-Dyne Corp., 572 F. Supp. 802, 805, 808 (S.D. Ohio 1983). Under relevant common law principles, liability in a contribution action is not joint and several. See, e.g., Restatement (Second) of Torts, § 886A(2) at p. 227 ("No tortfeasor can be required to make contribution beyond his own equitable share of the liability.") Federal courts have recognized, therefore, that liability in a contribution action under CERCLA § 113 is not joint and several.

In Kaufman and Broad-South Bay v. Unisys Corp., 868 F. Supp. 1212, 1994 WL 677448 (N.D. Cal. Nov. 30, 1994), the court refused to impose joint and several liability under § 107(a) in an action brought by a landowner liable under CERCLA against other allegedly responsible parties because the landowner was required to bring its action under § 113:

[o]nly a party who is not itself liable under CERCLA may bring a cost recovery action under § 9607(a). A liable party is restricted to bringing a contribution claim pursuant to § 9613(f). Liability is joint and several under § 9607(a) and merely several under § 9613(f).

Id., at *3. Other courts likewise have recognized that liability under CERCLA § 113 is not joint and several. See, e.g., State of New Jersey v. Gloucester Environ. Mgmt. Serv., Inc., 821 F. Supp. 999, 1004 (D.N.J. 1993) ("Third-party defendants such as the Municipalities here are, by judicial precedent, only severally liable for contribution under § 133(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1)."); Lyncott Corp. v. Chemical Waste Mgmt., Inc., 690 F. Supp. 1409, 1419 n.7 (E.D. Pa. 1988) ("liability for contribution under CERCLA is not joint"); United States v. Conservation Chem. Co., 619 F. Supp. 162, 229 (W.D. Mo. 1985) ("neither the federal common

B. A CERCLA-Liable Party Is Precluded From Bringing An Action Under CERCLA Section 107(a).

Courts in the Seventh Circuit and elsewhere have recognized that a CERCLA-liable party, like plaintiffs, are restricted to bringing their CERCLA claims against other allegedly liable parties as a contribution action under CERCLA section 113. In Akzo Coatings, Inc. v. Aigner Corp., 30 F.3d 761, 764 (7th Cir. 1994), the Seventh Circuit recently held that an action by a liable party under CERCLA against other allegedly liable parties must be brought under section 113:

Akzo itself is a party liable in some measure for the contamination at the Fisher-Calo site, and the gist of Akzo's claim is that the costs it has incurred should be apportioned equitably amongst itself and the others responsible. That is a quintessential claim for contribution. . . . Akzo's suit accordingly is governed by section 113(f).

(citations omitted). Similarly, in United Technologies Corp. v. Browning-Ferris Indus., Inc., 33 F.3d 96, 100 (1st Cir. 1994), the court recognized Congress' intent to preclude liable parties from suing other potentially liable parties under section 107:

Congress intended only innocent parties--not parties who were themselves liable--to be permitted to recoup the whole of their expenditures. By contrast, 42 U.S.C. § 9613(g)(3) allows a "non-innocent" party (i.e., a party who himself is liable) only to seek recoupment of that portion of his expenditures which exceeds his pro rata share of the overall liability--in other words, to seek contribution rather than indemnity.

See also Amoco Oil Co. v. Borden, Inc., 889 F.2d 664, 672 (5th Cir. 1989) ("When one liable party sues another to recover its equitable share of the response costs, the action is one for contribution. . . .").

As current owners of the MDCC facility and real property, plaintiffs MDCC and Theresa Slyman are unquestionably liable parties under, *inter alia*, CERCLA § 107(a)(1), 42 U.S.C. §9607(a)(1).

A. **Theresa Slyman And Slyman Industries Have Not Incurred Any CERCLA Response Costs And Therefore Cannot Assert Any CERCLA Claims.**

It is well established that a plaintiff must first incur recoverable response costs before it has standing to commence a private cost recovery action under CERCLA. See CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2); Ascon Properties, Inc. v. Mobil Oil Co., et al., 866 F.2d 1149, 1154 (9th Cir. 1989).

In their Amended Complaint, plaintiffs collectively allege that they have incurred investigation costs "in excess of \$100,000" since March 1992. (¶ 17) However, it is undisputed that those costs have been incurred by MDCC alone. For example, the report summarizing the investigation in which the alleged response costs have been incurred states that Milwaukee Die Casting Co., Inc. retained the investigation consultant. (DX-7 at ES-1) There is no mention in any document produced by the plaintiffs of Theresa Slyman or Slyman Industries having incurred any response costs. In their Amended Complaint, plaintiffs characterize Slyman Industries as "a holding company . . ." (¶ 4) George Slyman admitted in his deposition that he didn't know of any directors, officers or employees of Slyman Industries, other than his son Peter, who holds the figurehead position of Board Chairman. (G. Slyman Dep. at 5, 8-16) In her deposition, Theresa Slyman made it clear that she has no knowledge of any CERCLA response costs being incurred at the MDCC facility. (T. Slyman Dep. at 36-37)

Since it is undisputed that neither Slyman Industries nor Theresa Slyman has incurred any CERCLA response costs, all of their CERCLA allegations against Fisher must be dismissed.

A: No. Nobody from Fisher had anything to do with this project.
(Id. at 131) Mr. Boyd also confirmed that Fisher exercised no control over environmental decisions at MDCC's plant. (Boyd Dep. at 78)

In short, none of the indicia of control necessary to demonstrate that Fisher exercised "actual and pervasive control" over MDCC's day-to-day operations were present in the relationship between Fisher and MDCC. As a matter of law, plaintiffs cannot maintain their burden of showing that Fisher was an "operator" of the MDCC die casting plant under CERCLA. Accordingly, summary judgment on plaintiffs' CERCLA claims should be granted in favor of Fisher.

II. Even If Fisher Were Liable Under CERCLA, It Cannot Be Held Jointly And Severally Liable Under CERCLA Section 107

In the alternative, even if the Court allows any of plaintiffs' CERCLA claims to proceed to trial, Fisher is entitled to partial summary judgment: (1) dismissing all CERCLA claims asserted by plaintiffs Theresa Slyman and Slyman Industries because it is undisputed that neither has incurred any response costs and therefore neither has standing; and, (2) dismissing Count I of MDCC's Amended Complaint under CERCLA § 107 and precluding any claim that Fisher is jointly and severally liable to plaintiffs for response costs incurred at the MDCC plant. As a liable party under CERCLA, plaintiff MDCC, as well as plaintiff Theresa Slyman, is precluded from bringing an action to hold Fisher jointly and severally liable under CERCLA § 107(a).³ Instead, MDCC's CERCLA claims must be limited to § 113, which imposes several but not joint liability.

³ Fisher need not address in this motion whether Slyman Industries is liable under CERCLA for the alleged contamination of the MDCC facility.

Both James Boyd and Larry Kruse also testified that MDCC had the authority to make a certain level of capital expenditures necessary for day-to day operation. (Boyd Dep. at 16; Kruse Dep. at 19-20) Larry Kruse explained: "What you didn't want to do is make that amount so small that you stymied the day-to-day operation of [MDCC's] operation." (Kruse Dep. at 63) Indeed, Mr. Kruse recalled that, during the approximately two years that he monitored Fisher's investment in MDCC, there was never an instance in which MDCC sought approval for a capital expenditure from Fisher: "To the best of my knowledge, we never had one that large." (Kruse Dep. at 63) Mr. Boyd made clear that MDCC's capital expenditures were made from MDCC's own operating capital; Fisher did not advance MDCC funds for capital expenditures. (Boyd Dep. at 77-78)

In addition to its autonomy over day-to-day operations, MDCC also had broad authority in making decisions relating to environmental matters at MDCC's die casting plant. Earl Suess, MDCC's manager of engineering and the person responsible for environmental matters at MDCC during the relevant time, testified that he alone prepared the procedure for draining and flushing the PCB-based hydraulic fluid from the die casting machines and trim presses in 1981, and MDCC employees performed the work (Suess Dep. at 106, 118-119). Mr. Suess also stated that Fisher had no involvement in the agreement with Rollins Environmental Services for disposal of the drummed PCB wastes from the MDCC plant or the subsequent testing performed to confirm that PCB levels in the plant were below the permissible 50 parts per million ("ppm") established by federal regulations. (*Id.* at 122) Indeed, Mr. Suess testified that Fisher had no involvement in PCB matters at MDCC, or in regulatory compliance at the MDCC plant:

Q: Did anyone from Fisher Controls supervise regulatory compliance at the Milwaukee Die Casting plant?

testified that Fisher gave MDCC broad autonomy to run MDCC's business on a day-to-day basis.

Mr. Kruse testified:

Q: What responsibilities did you have for Milwaukee Die Casting?

A: How would I describe that? Milwaukee Die, on a day-by-day situation, pretty much operated autonomously of Fisher, but as all corporations require, it had to have someplace to report into, so I was assigned the responsibility to report into me.

* * *

Q: Do you know what the corporate relationship was between Milwaukee Die and Fisher?

A: Not specifically, no

Q: Do you have a general idea?

A: Well, it was -- generally, I would say it was more of an arm's length type of relationship. They kind of ran their own business. They knew that business. Like I said, you know, generally Fisher was not involved in that business, and that's probably one of the reasons Fisher elected to sell that business, because it wasn't a good fit.

(Kruse Dep. at 14, 24-25). Further, James Boyd testified:

Q: Mr. Boyd, did you ever involve yourself in the day-to-day management of Milwaukee Die Casting Company?

A: No.

Q: Did you ever involve yourself in the setting of corporate policies at Milwaukee Die Casting Company concerning the operation of the die casting business?

A: No.

(Boyd Dep. at 78) Indeed, like Jacksonville Elec. Auth., Mr. Kruse explained that MDCC was in a completely different type of business than Fisher and nobody at Fisher had the expertise to manage the day-to-day operation of a die casting plant. (Kruse Dep. at 23, 25, 62)

appropriate and consistent with the investment relationship' does not ordinarily result in operator liability, a corporation's 'actual participation and control' over the other corporation's decision-making does."); United States v. Kayser-Roth Corp., Inc., 910 F.2d 24, 27 (1st Cir. 1990) ("To be an operator requires more than merely complete ownership and the concomitant general authority or ability to control that comes with ownership. At a minimum it requires active involvement in the activities of the subsidiary.")

In Jacksonville Elec. Auth., the court refused to impose CERCLA liability upon a university that had previously owned a wood processing facility, and granted summary judgment in favor of the university. Although the university owned all shares of the corporation at the time of disposal, had dictated terms of employment of the corporation's president and hired one of its directors, and had apparently influenced the method by which certain of the corporation's treatment processes were carried out, the court refused to hold the university liable as an operator: "[W]e seek more than just indicia of a parent-subsidiary relationship We look for evidence that would demonstrate that Tufts was actively involved in Eppinger's occupational business affairs, or that Tufts itself actually participated in the contamination." Id. at 1111. The court found further support for its decision in the fact that the university was engaged in a different business than that of its subsidiary: "It is particularly important that the record contain such evidence in a case such as this, where the parent company -- the trustees of a university -- is in an entirely different business than that of the subsidiary." Id.

Like Jacksonville Elec. Auth., Fisher did not exercise the "actual and pervasive" control over Milwaukee Die Casting necessary to impose liability on Fisher as an "operator" of the MDCC facility. James Boyd and Larry Kruse, two Fisher employees responsible for overseeing Fisher's investment in MDCC during the time that Fisher owned MDCC's stock, have

corporate identities during the relevant time, Fisher cannot be held liable as an "owner" of the MDCC facility under CERCLA.

Finally, the fact that Fisher held title to Milwaukee Die Casting for two months between December 24, 1981 and February 23, 1982, strictly in order to facilitate the sale of Milwaukee Die Casting to the Slymans, does not constitute "ownership" of the facility under CERCLA. In Robertshaw Controls Co. v. Watts Regulator Co., 807 F. Supp. 144, 150 (D. Maine 1992), the court refused to impose "owner" liability where the defendant held title solely for the purpose of facilitating a sales transaction. See also, In Re Diamond Reo Trucks, Inc., 115 B.R. 559, 568 (W.D. Mich. Bankr. 1990) (imposing liability on "a straw, or conduit, through which ownership of the site passed" would "be extending the statutory language to an absurd plateau, thereby perverting congressional intent."). Moreover, as set forth in the foregoing Statement of Facts, the plaintiffs should not be allowed to characterize Fisher as the "owner" of the MDCC real property for CERCLA purposes when they took exactly the opposite position when it suited their tax objectives.

B. Fisher Was Not An Operator Of The MDCC Facility

Nor can Fisher be held liable under CERCLA as an "operator" of the Milwaukee Die Casting facility. "Merely owning the stock of a corporation that disposed of hazardous waste is not sufficient, without more, to hold a shareholder liable as an operator of the corporation's facility." Jacksonville Elec. Auth. v. Bernuth Corp., 996 F.2d 1107, 1110 (11th Cir. 1993). Rather, a parent corporation can be held liable under CERCLA as an operator only when it goes beyond the traditional investment relationship to exercise "actual and pervasive control" over the subsidiary's day-to-day operations. Id.; see also Lansford-Coaldale, 4 F.3d at 1222 ("Whereas a corporation's 'mere oversight' of the subsidiary or sister corporation's business in a 'manner

of corporate records; and (7) nonfunctioning officers or directors. United States v. Kayser-Roth Corp., 724 F. Supp. 15, 20 (D.R.I. 1989), aff'd, 910 F.2d 24 (1990). Further, as the Joslyn Mfg. court cautioned, "veil piercing should be limited to situations in which the corporate entity is used as a sham to perpetrate a fraud or avoid personal liability." Joslyn Mfg., 893 F.2d at 83.²

In Joslyn Mfg., the court granted summary judgment in favor of a parent corporation, holding that the parent was not liable for the CERCLA liability of its subsidiary as an "owner." The court explained that the subsidiary observed basic corporate formalities by, among other things, keeping its own books, conducting daily operations separate from its parent, filing separate tax returns, paying its own bills and arranging for its own employee benefits. Id. The court concluded: "The facts in this case do not support a finding that the [subsidiary] was designed as a bogus shell for [the parent] to hide behind." Id.

Application of the relevant factors to the relationship between Fisher and MDCC conclusively demonstrates that piercing the corporate veil between the two corporations is not warranted in this case. The financial records of the company and the testimony of Fisher's and MDCC's employees clearly establishes that Milwaukee Die Casting was adequately capitalized, and was a going, profitable concern during the time that Fisher owned Milwaukee Die Casting's stock. (See Statement of Facts, above.) Because Fisher and MDCC maintained separate

² In determining whether to impose a subsidiary's CERCLA liability on a parent corporation, federal courts apply federal common law veil piercing standards. See Kayser-Roth, 724 F. Supp. at 20; In re Acushnet River & New Bedford Harbor Proceedings Re Alleged PCB Pollution, 675 F. Supp. 22, 33 (D. Mass. 1987). Wisconsin's standards for veil piercing, however, differ little from the federal common law standard. See, e.g., Consumer's Co-op of Walworth Cty. v. Olsen, 419 N.W.2d 211 (Wis. 1988) (evaluating similar veil piercing factors); see also Kayser-Roth, 724 F. Supp. at 20 (recognizing that "courts confronting this choice of law issue have observed that the distinction between state and a federal rule of decision is of little practical difference.").

Further, in the event the Court allows any of plaintiffs' CERCLA claims to proceed to trial, plaintiffs' claims under section 107 of CERCLA should be dismissed. Plaintiffs themselves are unquestionably liable under CERCLA as current owners of the MDCC facility. As CERCLA-liable parties, plaintiffs are precluded from bringing a claim under section 107(a) and must, instead, bring their CERCLA claims under CERCLA section 113. Liability under CERCLA section 113 is not joint and several. Therefore, Fisher is entitled to partial summary judgment dismissing plaintiffs' claims under CERCLA § 107 and precluding any claim that Fisher is jointly and severally liable to plaintiffs for response costs incurred at the Milwaukee Die Casting facility.

I. Fisher Is Not Liable Under CERCLA

A. Fisher Was Not An Owner Of The MDCC Facility

A corporation is not liable as an "owner" under CERCLA solely by virtue of its ownership in another, potentially responsible corporation:

CERCLA does not define 'owners' or 'operators' as including the parent company of offending wholly-owned subsidiaries. Nor does the legislative history indicate that Congress intended to alter so substantially a basic tenet of corporation law.

Joslyn Mfg. Co. v. T.L. James & Co., Inc., 893 F.2d 80, 82 (5th Cir. 1990). A corporation that owns all of the stock of another corporation is liable as an owner only "in situations in which it is determined that piercing the corporate veil is warranted." Lansford-Coaldale Joint Water Auth. v. Tonolli Corp., 4 F.3d 1209, 1220 (3d Cir. 1993).

Factors used in determining whether veil piercing is appropriate under CERCLA include: (1) inadequate capitalization in light of the purposes for which the corporation was organized; (2) extensive or pervasive control by the shareholder or shareholders; (3) intermingling of the corporation's properties or accounts with those of its owner; (4) failure to observe corporate formalities and separateness; (5) siphoning of funds from the corporation; (6) absence

carry-over. (Glaser Dep. at 71) Despite the fact that the closing was delayed until February 23, 1982, Slyman successfully took the position with the U.S. Internal Revenue Service that "the burdens and benefits of ownership" of MDCC transferred to the Slymans prior to December 31, 1981. (Glaser Dep. at 71-74) In making this tax case, Slyman's lawyer cited the following facts to support the contention that Slyman was the effective owner of MDCC prior to year-end:

1. The economics underlying the negotiation which led to the purchase were based upon a transfer of the business for both economic and tax purposes at the end of 1981.

2. The parties agree that the transfer was effective as of the end of 1981 and that the burdens and benefits of ownership were transferred at that date.

(DX-53, emphasis added) Slyman thus contended that "effective as of the end of business on December 26, 1981 . . . the burdens and benefits of ownership were transferred to the buyer [the Slymans]." (*Id.*)

ARGUMENT

CERCLA imposes liability on "any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . ." 42 U.S.C. § 9607(a)(2).¹ To be liable under CERCLA, therefore, Fisher must have been an "owner" or "operator" of the MDCC facility at the time that the alleged hazardous substances were disposed of there. Fisher was not an owner or operator of the MDCC facility under CERCLA at any relevant time. Fisher is therefore entitled to summary judgment dismissing all of plaintiffs' CERCLA claims with prejudice.

¹ CERCLA also imposes liability upon current owners of facilities like Milwaukee Die Casting, persons who arranged for disposal of hazardous substances at a facility, or persons who transport hazardous substances to a facility for disposal. See 42 U.S.C. § 9607. Plaintiffs' Amended Complaint, however, does not allege that Fisher falls within one of these categories of responsible persons under CERCLA.

worker safety program, with full spending authority: "He [Wheeler] said, whatever it takes, do it." (Id. at 293-294)

11. MDCC also retained local responsibility for environmental decisions and policies at its plant. (Boyd Dep. at 78) For example, Mr. Suess hired a local consultant to prepare required permit applications. (Suess Dep. at 306) Mr. Suess was personally responsible for dealing with agency inspections. (Id.) During 1980-81, MDCC drained and flushed its PCB-based hydraulic fluid from its die casting machines and trim presses and replaced it with an alternative product. Mr. Suess planned and managed the program for replacing the hydraulic fluid, and the entire project was run by MDCC's own employees. (Suess Dep. at 106, 118-119)

12. George Slyman wrote Fisher on December 10, 1981, offering to purchase MDCC for \$4.5 million, on the condition that Fisher first acquire the title to MDCC's real property so that the real property could be sold to Slyman separately from the shares of the corporation. (DX-19) Fisher accepted this offer on December 14, 1981, subject to the execution of formal sale agreements. (DX-20) On December 23, 1981, Slyman's lawyer, Robert Glaser, wrote Fisher urging that MDCC dividend its real property to Fisher before year-end to satisfy Slyman's tax objectives. (DX-45) Glaser confirmed in his deposition that the dividending of MDCC's real property to Fisher prior to the sale of the property to Theresa Slyman "was necessary in order to accomplish the acquisition as envisioned by the Slyman group." (Glaser Dep. at 67-68) MDCC's directors complied with Slyman's request to dividend the company's real property to Fisher on December 22, 1981, and the special warranty deeds were executed on December 24, 1981. (DX-109; DX-117)

13. Slyman's tax plan also called for the "effective date" of the acquisition to be prior to year-end 1981, so Slyman's ongoing company would benefit from an operating loss

John Wheeler was a very good manager and he had a good operation going, and I didn't want to screw it up.

(Id. at 41-43) During Rogers' tenure in Milwaukee, responsibility for the day-to-day functioning of the die casting operation at the plant therefore remained with the local manufacturing superintendent, Mike Matthews, and his foremen. (Id. at 42)

10. Although Fisher and its parent Monsanto Company exercised some oversight over occupational safety compliance at the MDCC plant, their overall involvement was minimal. MDCC's plant engineer, Mr. Suess, attended a four-day seminar at Monsanto's offices in 1977 or 1978 on how to take noise and ambient air samples to comply with OSHA regulations. (Suess Dep. at 240-241) After the seminar, MDCC purchased the equipment to perform the OSHA tests, but Mr. Suess felt that he wasn't qualified to take the air samples. (Id. at 254-255) Mr. Suess therefore requested that Monsanto personnel perform the required OSHA sampling at the plant. (Id.) (Even after the Slymans purchased the company, MDCC employees never performed the OSHA tests on their own. (Id. at 308)) During those periodic visits, Monsanto personnel took air and noise samples and also performed a safety walk-through to recommend ways to minimize the risk of worker injuries. (Id. at 307-308) Monsanto's periodic safety inspections supplemented the independent insurance inspections that began during the Shroeder family's ownership of the facility. (Id. at 308) After it acquired MDCC's stock, Fisher received a copy of the insurance reports. On one occasion, Mr. Suess recalled that Fisher's management sent Mr. Wheeler a critical letter for ignoring an insurance inspector's recommendation to install safety guards on die casting machines to bring them into compliance with OSHA. (Id. at 292-93) From that time forward, Mr. Wheeler delegated to Mr. Suess the responsibility for the plant's

Wheeler's unexpected death "put a big hole in the organization," and was one of the reasons why Fisher decided to sell the company, as the Fisher manager responsible for overseeing MDCC in 1981 testified:

Mr. Wheeler was a very important part of that business, and he understood the business. He understood the customer base, and when he passed away, it put a big hole in the organization. And I think, probably, it was one of the reasons why at least I was influenced to make the recommendation we ought to get out of that business, because no one in Fisher had any experience in running a die casting business. The success of that business on a large part was based on Mr. Wheeler's participation in it.

(Kruse Dep. at 26-27) Following Mr. Wheeler's death, Arthur Rogers, a Fisher manager with a background in personnel management, was sent to MDCC as the temporary general manager.

(Rogers Dep. at 4-6, 40) Because the assignment was a temporary one, Mr. Rogers remained on Fisher's payroll, with MDCC reimbursing Fisher for his salary. (*Id.* at 44-45) Rogers' principal assignments were to oversee the union contract negotiations that summer and to "evaluate the staff or go outside and interview candidates as possible successors to the GM position....". (*Id.* at 5-6, 41) (Rogers' assignment to hire a permanent general manager was mooted by Fisher's decision to sell the company to the Slymans.) Rogers had "never even toured a die cast plant before," and he "knew the only way I could do it is if they had a competent staff there." (*Id.* at 41) Rogers' only agenda as the temporary general manager was to "get the [union] contract, keep the plant going." (*Id.*) Rogers characterized his June 1981 to February 1982 tenure as interim general manager as "custodial in nature":

It was more custodial in nature because my position was temporary in nature, and part of my assignment was to seek out a General Manager, and in that circumstance you don't run in and make a bunch of changes and have somebody else come in further down the road and they want to do things differently.

* * *

at 23, 25, 62) Fisher therefore relied as a matter of necessity on the local management team, led by the General Manager, John Wheeler. As Fisher's manufacturing vice-president from 1975-1979 testified:

Q: Mr. Boyd, could you describe how it was that Mr. Wheeler was selected as executive vice-president and general manager of Milwaukee Die Casting in 1975?

A: Yes, I think I can. Other than a user of die castings, we had no expertise within the Fisher organization relating to the manufacture of die castings and we were looking, in looking in[to] the acquisition of Milwaukee Die, as to how that expertise would be provided, not only in the manufacturing, but in the related marketing and the whole structure of the operation of a die casting business.

So, we looked to Milwaukee Die with the help of Mr. Schroeder to see what internal capabilities they would bring to us. We looked with some concern because our principal contact through the years had been with Mr. Schroeder who we regarded as a very competent individual in every phase of the die casting business, and he really had only two people up there to talk to us about.

One was Mr. Suess, who was in the manufacturing operations, and the other, Mr. Wheeler, who had joined them far more recently, but was well aware of the die casting process and the marketing of die castings and the aspects of the profitable operation of the business in that regard. Mr. Wheeler had become Mr. Schroeder's understudy in a broad sense in the management of the business, and it was Mr. Schroeder's recommendation that we name Mr. Wheeler to the responsibility for the operation of the company. And as the records indicate, we subsequently did that.

And, again, I would emphasize that we looked to him of necessity because we didn't have those kind of capabilities and that because we didn't have those capabilities, the operation of the company remained strongly in the hands of the people who had really been responsible for it before because Mr. Schroeder had to some degree, backed away from the full depth of broad management responsibilities.

(Boyd Dep. at 74-76, emphasis added)

9. Mr. Wheeler served as the executive vice-president and general manager of MDCC from 1975 until his death of a heart attack in May of 1981. (Rogers Dep. at 40) Mr.

\$3,164,000. (DX-18) After his November 1981 due diligence review of MDCC's plant and financial records, the Slymans' controller, R.E. Auer, concluded: "This company, I believe, is a very well maintained and run operation. It has been a very profitable and good cash generating operation." (Id.)

5. MDCC prepared its own yearly budget and forecasts, paid its own bills and collected its own accounts receivable. (Boyd Dep. at 31, 35; Kruse Dep. at 61) MDCC paid its employee salaries directly, not through Fisher. (Boyd Dep. at 71-72; Kruse Dep. at 62) The MDCC pension plan was maintained separately from Fisher. (Suess Dep. at 91)

6. The day-to-day operations of MDCC were managed autonomously from Fisher as well. MDCC set its own policies for the day-to-day operation of the plant (Kruse Dep. at 14; Boyd Dep. at 31, 33, 78) and had authority to make its own capital expenditures necessary for day-to-day operation. (Kruse Dep. at 63; Boyd Dep. at 16-17) Funds for equipment purchases made by MDCC were generated from MDCC's own operations; Fisher did not advance funds for equipment purchases to MDCC. (Boyd Dep. at 40, 78) And, as with most parent-subsidiary relationships, contact between Fisher and MDCC consisted primarily of monthly financial reports. (Kruse Dep. at 64-65)

7. Fisher's purchases of die castings from MDCC were conducted at arm's length. Fisher negotiated pricing and other aspects of its transactions with MDCC on an arm's length basis. (Boyd Dep. at 35-36; Kruse Dep. at 55) MDCC had large customers other than Fisher. MDCC did not extend preferential treatment to Fisher compared to its other large customers. (Suess Dep. at 259; Kruse Dep. at 61; Rogers Dep. at 17-18; Boyd Dep. at 35-36)

8. MDCC's business was completely different from that of Fisher Controls. Fisher did not have the expertise to run a die casting business. (Boyd Dep. at 74-76; Kruse Dep.

castings. (See, e.g., Rogers Dep. at 17) The time, expense and business interruption required to move Fisher's dies to another die caster alone provided substantial justification for acquiring MDCC. (Boyd Dep. at 19-26; PX-219)

2. To minimize Mr. Schroeder's tax liability, Fisher's purchase of his company's assets was structured as follows. On December 9, 1974, a new company by the name of Milwaukee Die Casting Co., Inc. was incorporated in Delaware. (DX-111; DX-94) On January 13, 1975, the Delaware corporation's board of directors consented to the sale of the shares of the company to Fisher, in consideration for the transfer to the Delaware corporation of the business and assets of Milwaukee Die Casting Co., the Wisconsin corporation. (DX-97) The Wisconsin corporation deeded its real property to Fisher on January 14, 1975, whereupon Fisher immediately deeded the same property to the Delaware corporation. (DX-112; DX-113) Both transactions were recorded the next day. (DX-114; DX-115; DX-116)

3. The shares of Milwaukee Die Casting Co., Inc. (the Delaware corporation), were owned by Fisher from January 13, 1975, until February 23, 1982. During the period of Fisher's stock ownership, MDCC maintained its separate corporate existence and management. MDCC was adequately capitalized, and was a going, independently viable concern. (Boyd Dep. at 43; Rogers Dep. at 52)

4. MDCC was consistently profitable during the years of Fisher's stock ownership, and management re-invested those profits in the company. For example, from 1975-1980, MDCC retired \$186,000 in pre-existing debt, invested \$1,868,000 in plant equipment and other capital expenditures, and increased its cash reserves from \$109,000 to \$2,407,000. (DX-55) The company was debt-free after 1979. (Id.) Even after paying its shareholder a \$2.3 million dividend in September of 1981, Milwaukee Die Casting had no debt and a book value of

liable as an operator of its subsidiary's business only when it 'exercises actual and pervasive control of the subsidiary to the extent of actually involving itself in the daily operations of the subsidiary.' " Jacksonville Electric Authority v. Bernuth Corp., 996 F.2d 1107, 1110 (11th Cir. 1993)(emphasis added, citation omitted). Holding parent corporations liable for the acts of subsidiaries when there is no such daily operational control would dramatically expand the scope of strict liability set forth in the statute: "To inflict liability based on a showing of anything less would expand the language of the statute beyond the intent of Congress as expressed through the words of the legislation." Id.

Here, the relationship between Fisher and MDCC reveals nothing "more than just indicia of a parent-subsidiary relationship." Id. at 1111. Accordingly, there is no basis for imposing CERCLA liability and, therefore, this Court should grant summary judgment for Fisher as to Counts I through III of plaintiffs' amended complaint.

In the alternative, in the event the Court allows any of plaintiffs' CERCLA claims to proceed to trial, plaintiffs Theresa Slyman's and Slyman Industries' claims should be dismissed for lack of standing. Plaintiff MDCC's attempt to impose joint and several liability on Fisher under CERCLA § 107 should also be dismissed as a matter of law, based on the undisputed fact that MDCC is itself a liable party under CERCLA.

STATEMENT OF UNDISPUTED FACTS

1. In the summer of 1974, MDCC's president and principal shareholder, F. J. Schroeder, Jr., informed Fisher that he was planning on retiring and that his family wanted to sell the company. MDCC was an important supplier of die cast parts to Fisher at the time. There was a scarcity of quality die casting capacity, and Fisher's management was concerned that another one of MDCC's customers might purchase the company and disrupt Fisher's supply of die

2/9/95

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE
CASTING CO. et al,

Plaintiffs,

v.

FISHER CONTROLS
INTERNATIONAL, INC.

Defendant.

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No. 93-C-0325

Judge Reynolds

FISHER CONTROLS INTERNATIONAL, INC.'S
MEMORANDUM IN SUPPORT OF PARTIAL SUMMARY JUDGMENT
AS TO COUNTS I THROUGH III OF PLAINTIFFS' AMENDED COMPLAINT

INTRODUCTION

As the parent corporation of Milwaukee Die Casting Company ("MDCC") from January 1975 until February 1982, Fisher Controls International, Inc. ("Fisher") cannot be held liable under CERCLA as an owner or operator of the MDCC plant.

A corporation is not deemed to be an "owner" of another company under CERCLA merely because it owns the company's common stock. Ioslyn Mfg. Co. v. T.L. James & Co., Inc., 893 F.2d 80, 82 (5th Cir. 1990). Nor, absent exceptional circumstances, is a parent corporation deemed to "operate" its subsidiaries: "[I]t is obviously not the usual case that the parent of a wholly owned subsidiary is a [CERCLA] operator of the subsidiary." United States v. Kayser-Roth Corp., 910 F.2d 24, 27 (1st Cir. 1990). "To be an operator requires more than merely complete ownership and the concomitant general authority or ability to control that comes with ownership." Id. As the Eleventh Circuit recently ruled, "a parent corporation may be held

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing FISHER CONTROLS
INTERNATIONAL, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT to be served
on the following persons by Federal Express courier:

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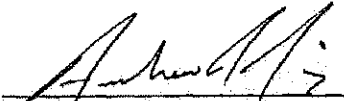
Richard J. Sankovitz
Whyte Hirschboeck Dudek, S.C.
111 East Wisconsin Ave., Suite 2100
Milwaukee, Wisconsin 53202-4894

Dated: February 9, 1995


Andrew R. Running

WHEREFORE, for the reasons set forth in the accompanying Memorandum In Support, defendant Fisher Controls International, Inc. respectfully requests that this Court grant its motion and enter judgment in its favor and against plaintiffs on Counts I, II and III of their Amended Complaint.

Dated: February 10, 1995


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2/9/95

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE DIE)	
CASTING CO. et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 93-C-0325
)	
FISHER CONTROLS)	Judge Reynolds
INTERNATIONAL, INC.)	
)	
Defendant.)	

**FISHER CONTROLS INTERNATIONAL, INC.'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, defendant Fisher Controls International, Inc. ("Fisher") hereby moves this Court for summary judgment on all of plaintiffs' claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). As set forth in the accompanying Memoranda in Support, under the undisputed facts Fisher was neither an "owner" nor an "operator" of the Milwaukee Die Casting facility, and therefore is not liable for any of plaintiffs' CERCLA claims. Counts I, II and III of Plaintiffs' Amended Complaint should accordingly be dismissed with prejudice.

In the alternative, in the event the Court allows any CERCLA claim against Fisher to proceed to trial, Fisher moves the Court: (1) to enter summary judgment for Fisher on Theresa Slyman's and Slyman Industries' CERCLA claims because they have incurred no recoverable response costs and therefore lack standing to assert any CERCLA private cost recovery claim; and, (2) to enter summary judgment for Fisher on Milwaukee Die Casting's CERCLA § 107 claim because MDCC is a liable party under CERCLA § 107 and therefore is barred as a matter of law from asserting such a claim

